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The Utility Security Owners Get Together for Self-Defense

As our legislators are blithely voting to spend public funds, the cost of government is rising at an alarming rate. The increase in taxation of the public service corporations has now become so extravagant that the stockholders are beginning to call a halt. This article tells what they are doing about it.

BY HERBERT COREY

WHEN I was a rather youngish reporter in Cincinnati, Morris White was the principal banker. He is dead now and I am no longer afraid of him, so I shall state that while I regarded him with immense respect he aided me in forming that air of a startled fawn by which I was widely known. For years I jumped when any one cleared his throat. On one occasion Mr. White looked at me with positive hate:

"I am tired," he rumbled. "Trying to take care of stockholders who will not take care of themselves."

A weak thought came to me. I would placate this man. I would synthetically caper before him.

"Why do you not let them look out for themselves?"

"They won't," he growled. "Stockholders never do."

THAT line clung like a burr. Occasionally it seemed that Mr. White had been unduly disdainful of stockholders, but for the most part

events supported him. Sometime later Bert Williams, the dark Kansan who was one of the finest artists the United States has ever known, qualified as an economist by adding an unexpected verse to an old song. Mr. Williams asked who would believe that security holders could get together for protection and answered the query with one word:

"Nobody."

But nevertheless, the security holders are now doing precisely that. Many thousand of them. The Security Owners Association is a body of stock and bond holders who in the aggregate are the real owners of the properties. The function of the organization is to protect their investments in the railroads and utilities against injury. There are politicians who—set against the background of an uninformed public—are as dangerous as a hungry snake in a nest of eggs. Nor will the Security Owners Association tolerate the spoliation of properties by incompetent or wrong-headed managers. The aim of the organization is to compose whatever differences arise between the utility management and the public or between the utility management and labor and to interpret railroad and utility situations to other investors and the public.

Fifteen billion dollars of the forty billion dollars invested in railroads and utilities are represented in the organization. Its members are kept informed on the significant developments of the day. The growth and direction of public opinion are noted. The mistakes made by railroad and utility managements are commented on.

I WAS something of a doubter when I began an inquiry into the activities of the association. Not that I doubted its good intentions. The names of the men on its executive committee were heartening, for among them are fifty-two officials of banking institutions of the first rank, eight presidents of major insurance companies and one vice president, and other men who occupy equivalent rank in the financial world. But I was skeptical of the ability of any organization to keep the American security holder interested in his own defense. It is true that stockholders of individual corporations have signed proxies or gone to the courts with plaints, but collective action has seemed beyond their range. For the most part they make me think of my old friend Mrs. Wilbur Day, who shared with her husband the responsibilities of a sheep ranch near Sun Dance, Wyoming. At that period cattlemen thought a little less of sheep men than they did of prairie dogs, which is very little indeed, and they displayed a manly candor about it. After a more than usually distressing manifestation Mr. Day sought to cheer Mrs. Day.

"You stick to me, mother," said he, "and the time will come when you will see me pull my pants on over pure silk."

Mrs. Day gave him a dull look.

"It don't hardly seem," said she, "like it's going to be worth it."

Perhaps this indifference on the part of the American security holder has been due to his ability to read the tape. A stockholders' meeting in England is as solemn as a state fu-

neral, and if the management fails to produce the affidavits of eyewitnesses the subsequent proceedings are painful to a degree. The only amusing stories ever printed in the London *Times* are those in which a K.C.B. writhes under the proddings of a green grocer who is in the red. As an admirer of the American spirit I prefer to believe that our security holders sell short when their stocks go sour, rather than be not quite a gentleman in public. Yet it must be admitted that selling out is not precisely a means of defense.

THE National Association of Owners of Railroad Securities was organized in 1917; in 1927 it shortened its name to the Security Owners Association and broadened its purposes to take in the utilities. It is not connected with either railroads or utilities as industries, but it represents the owners of the securities. Among these owners are not merely individuals but the great fiduciary institutions. Each one of the 65,000,000 Americans who carry insurance policies and the 12,000,000 Americans who have savings in mutual institutions is directly concerned with the safety of these securities. It is estimated that 45 per cent of the obligations of the railroads are held by life insurance companies and mutual savings banks. I have no figures at hand to show the extent to which they have invested in utility securities.

The association aims to coöperate with the executives of railroad and utility companies, as well as to aid in the defense of its members' investments when affected by nation-wide factors. That coöperation also involves a friendly relation with union labor. It was S. Davies Warfield, of Baltimore, the first president of the association, who defined the association's place in this formula:

"If a company gets into trouble the executives hold their positions. They are needed to go on managing.

"The employees hold their jobs. They are needed to go on working.

"Only the security holder loses."

MR. Harrison suggested that the reason for owning a security is that the owner wishes to be secure, and that this could best be accomplished if the owners and the managers worked together in harmony. If a question arose as to policy, it was desirable that the men who are the true source of authority be in a position to express their views clearly to the men whose task it is to carry out the policy. He made it clear that the Security Owners Association believes that the interest of the investor is best protected by carefully safeguarding the rights of the public.

The idea that security owners should combine to assist in the development and protection of their properties seems to have been definitely new to some of the executives. Yet

¶ "THE *new idea is that the owners of the securities wish their securities to be secure. They have no desire to interfere in the management unless and until the executives stoop to folly. Then they would see what they would see.*"

the executives hold their positions by the vote of the majority stockholders and it would be difficult to find a reason why they should not be joined in formulating plans or carrying out projects of importance. Security owners have no desire to interfere in the management unless and until the executives stoop to folly. Then they would see what they would see.

LATER Mr. Harrison was asked by the leaders of the railroad unions to meet them and get acquainted. They thought of him at first as an emissary in disguise of the executives. That is the natural way in which they would think of him. The rules of the game as played in the past provided for only two players—the bosses and the workmen. They had not thought that the owners would take a hand. One grand old man who began life with a pick and had worked his way to a high place in American labor began a speech that fairly thundered. He was carrying the assembly with him and Harrison knew it. There was right on both sides and plenty of stubborn anger:

"You talk like a railroad president," said Harrison.

The ice was broken.

The temper of the meeting changed with the laugh that followed. Not once since the initial meeting have the representatives of labor shown hostility toward the Security Owners Association. There has not always been agreement—far from it—but the representatives of the owners and of the employees have been able to thrash out the disagreements in amity. They have become such good friends that they have been able to be *frank.*

Mr. Harrison has been able to convince them of the sincerity of his purpose; his desire to give them a closer sympathy and understanding with the problems of management to the end that greater friendliness and coöperation and resulting efficiency in the operation of properties might result.

The result has been a surprising friendliness of relation on the neutral ground afforded by the association. Talks over lunch tables have been frequent and emollient. Each side has been able to hear the other's side expressed conversationally. That always helps.

THE first appearance of what is now the Security Owners Association was in 1917. The war had been ripping away for three years. Then the United States declared itself in with that masterly confidence in the spoken word that made us unique among nations. We believed that we were so all-fired smart that in almost no time at all we could short-cut our way to victory. Our airplanes were to blacken the sky, fleets of stone boats were to provision the Allies, and a million men were to spring to arms over night. It was at this time that the master minds in Washington had the idea of taking the railroads away from the men who knew how to run them and turning them over to the politicians who did not. A minor defect of the scheme was that it threatened to destroy the value of railroad securities.

I mean just that. Destroy. Once a politician gets into a property it has about the same chance of life that a lame mouse has with the great horned owl.

The Utility Security Owner Is Becoming Informed About the Extravagant Rise in Taxation

"THE association is calling to the attention of our free-handed state and national legislators the frightening growth in tax bills in the last few years. To be more precise, it is calling this to the attention of the men who pay the taxes and elect the legislators. . . . The extravagant rise in the taxation of the railroads and utilities is noted, but this does not affect John Citizen until it gets home to him. The association is bringing it home."

A MEETING of the security holders whose interests were endangered was called for Baltimore in May, 1917. The decline in the values of railroad securities had already been frightening. No one could tell what might happen under government direction except that it would not be for the best. The association was organized with S. Davies Warfield as president and through its members and agents at once went to work. Through their efforts the contract under which the government took over the railroads was rewritten for the protection of the security holders. When the roads were returned to their owners many of the provisions of the law were framed at the suggestion of the members of the association. An amendment to the Transportation Act of 1920 was secured through which the roads were able to get funds for the replacement of their worn-out and antiquated equipment. The association has coöperated with the Interstate Commerce Commission in an effort to coördinate the services and facilities of railroads.

BY 1927 it was recognized that the picture was changing. Public utilities were coming under fire. There will be no disposition on the part of any one, I think, to maintain that all of the utilities were blameless. Hostility was being shown to the utilities by men who are honest believers in socialization and by others who found in such hostility an easy road to political favor.

New ideas of taxation were being put forth. Public ownership was offered as a cure for private living costs. Corporations were being criticised by evangels who knew they could run them better than the men who owned them. Commissions were popping up everywhere with authority to ask questions at great expense to the questioned. Many of these queries were openly framed for political effect. The attacked utilities were taking all this as a dry land farmer does a hot wind. They did not like it but they were afraid to do anything about it. Even to pray against it might be rated as impious.

Whereupon the National Associa-

tion of Owners of Railroad Securities broadened its purpose and shortened its name. The utility security owners were included.

It became more militant.

Now it proposes to meet the attacking politicians on their own ground. To do so it has taken a leaf out of the most effective political organization on record. Whether you like a noggin of rum at bedtime or believe that a beer bibber is a lost soul, it will be admitted that the Anti-Saloon League's managers knew their business. They operated on the theory that a minority that cannot be scared, bought, or kissed off can control almost any district. When William P. Anderson was the League manager in New York state he put that succinctly:

"We look bigger than the Capitol at Washington to the candidates for Congress," said he.

THERE are many thousands of members of the Security Owners Association. No-account men do not save money and buy stocks and bonds. If they were not organized they would be helpless. One man would vote this ticket and his neighbor would vote that ticket and one hand would wash the other. That is not the way to get results.

The association has organized a coöperating council of 5,000 members, in 433 congressional districts in the United States. The members of the council report to the association upon conditions which affect general business and the railroads and utilities and they make suggestions for their remedy. They know the men who know the men who own the stocks and bonds. They can talk to their neighbors; they can explain problems of today to those who may not have an opportunity to investigate. This will possibly be regarded as high treason by some. The radical rarely wants the facts. It is he who is most vociferous in demanding free speech, but only wants his own speech to be free. John Spargo tells that, while he was a convinced socialist, being paid by socialists to speak in schoolhouses and write in magazines, the socialist saw nothing wrong in what he was doing. When he stopped being a socialist they tried to bar him from the schoolhouses. It makes a great deal of difference whose goose is being plucked. The Security Owners Association seems to have taken as its motto: "More light."

THE reporting members of the coöperating council tell frankly of districts in which a strong sentiment exists for the public ownership of utilities. They can give the reasons why, too.

"The public ownership people are campaigning constantly. Our side never has a word to say.

"The company is not well liked. If a proposition to take it over by the city were put to a vote it would win.

"It does not give good service. It would be comparatively easy for it to improve the service but nothing is done.

"The officials are not friendly. The employees are rude and unobliging. There is local objection to foreign ownership and direction."

In reading over a digest of the reports from 427 congressional districts represented out of the 433 I was

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struck by the recurrent expression of this thought:

"The best protection against governmental interference is better service."

Corporation executives may not put thumbs in their armholes when they read that, but it is worth thinking over. The expression of the thought is proof that the association is precisely what it professes to be, and that is an association of owners who are concerned about what may happen to their securities. There is another proof of that. The owners do not enjoy the querulous scoldings which some utility executives give the public. All the executives say may be the truth, but they say it in such a way as to lift the belligerent hackle on the popular neck.

"Keep the corporations out of politics" many of the reporting councilmen advised. It is human nature for the individual to fight a company. The same man will not fight the man who owns stock in the company. The set-up is changed.

It is also advised that the executives refrain from political activities. They do the cause harm when they get eloquent. The broad general principle seems to be recognized that use must be made of political forces to defend properties. When this is necessary, however, it is the work of the individual owner, and not the corporation. The individual can create a sentiment that can take the government out of the barge business and require truck and bus operators to pay fair compensation for the use of thoroughfares furnished at the cost of the taxpayer.

On the whole the reports are optimistic. Few of the reporting councilmen fear that public ownership will ever evict private ownership of the utilities. American sentiment is against public ownership. The best arguments for it, they say, are to be found in the mistakes, the greediness, and the dictatorial attitude assumed by some executives. The reporting railroad presidents do not fear that the railroads will not be able to overcome the difficulties they are encountering at present, although they emphasize the need for constructive coöperation by the security holders.

By that they mean the creation of sentiment which will be reflected at the polls.

Among the difficulties they list are unfair competition by the government, regulation that is progressively becoming a niggling interference with operation, and the refusal to permit roads to engage in all forms of transportation when needed to round out the service. One president observed that popular opinion compels railroads to fight their case out in the courts and

before regulatory bodies instead of appealing directly to the people. This story needs a tag line.

THE association is calling to the attention of our free-handed state and national legislators the frightening growth in tax bills in the last few years. To be more precise, it is calling this to the attention of the men who pay the taxes and elect the legislators. In 1913 the average family paid $135 in Federal, state, and local taxes—which is a sizable bit of money—but by 1929 it had grown to $460. The extravagant rise in the taxation of the railroads and utilities is noted, but this does not affect John Citizen until it gets home to him. The association is bringing it home.

"Nearly one fourth of the property, activities, and traffic of the railroads in 1929 were devoted to producing net earnings sufficient to pay the tax on railroad property as a whole.

"Public utility taxes during 1928 could have furnished the entire tax levy of the cities of Boston, Philadelphia, Detroit, and Chicago. They could have paid the entire expense of the United States Navy and had enough left over to meet the deficit of the Post Office Department.

"They could have made up the income taxes for all persons having incomes of less than $100,000 a year."

WHETHER he likes it or not, John Citizen is paying these taxes out of his own pocket. And every time a tax rate is boosted it is because state or national legislators have spent more money. The Security Owners Association is offering that to John Citizen to think over.

May it give him a headache!

The Rate of Return Allowed by Law to the Utilities

COURTS have repeatedly held that it is impossible to fix a definite percentage of return on utility investment as "reasonable." It is impossible for them to say:

"This hereafter shall be the rate of return employed in all cases because it is a fair rate."

Tomorrow it may be either excessive or inadequate.

Nevertheless, while specific allowances acknowledged by various tribunals to be fair and reasonable have fluctuated from time to time, they have always appeared to fall somewhere between 5 per cent and 9 per cent of the fair value of the property involved. Investigation of all the cases published in *Public Utilities Reports* from 1915 to 1930 reveals the following schedule of allowances:

	5% or better	*6% or better*	*7%*	*7% to 8%*	*8% or better*	*9% or better*
GAS	5	14	45	43	57	13
ELECTRIC	3	16	43	31	86	12
TELEPHONE	6	24	73	38	66	16

A computation from these figures yields an average rate of return of 7.41 per cent for gas companies, 7.50 per cent for electric companies, and 7.22 per cent for telephone companies, a composite rate of 7.38 per cent for all three companies.

The Power Trust, the Politician and the Plunderbund

PART III

The Three Water Witches—Boulder Dam, St. Lawrence, and Muscle Shoals—Brew a Political Broth

IN the following instalment the author tells how each of Uncle Sam's three major hydroelectric power projects had their beginnings in wholly different ventures, how each was drawn into the political arena by a different route, and how all three are now being exploited as a part of the campaign of the liberal-radical group in their campaign to bring the utilities under government ownership and operation.

BY ERNEST GREENWOOD

NOT so very many years ago the socialists and various allied groups of radicals abandoned, publicly at least, their announced program of nationalization—(that is, government ownership and operation of all processes of production and distribution including transportation, communications, electric light and power, mines, manufacturing, and agriculture)—in favor of concentration on some one industry and, as it has so happened, even on isolated units of some one great national industry. Communism—and nationalization according to the socialistic use of the word is only a species of communism differing not at all in principle from the Russian system—has but little appeal for the great mass of the people in a country such as ours where the capitalistic system, in spite of its faults and occasional inefficiencies, has produced the means for a standard of living for all classes far superior to that of any other country in the world.

The World War provided them with what looked, at first, like a golden opportunity to make a fresh start with an entirely new layout. It was a scheme which, while it might mean a postponement of "Der Tag" when they would be in control of the Unit-

ed States sector of the world revolution and our participation in international conferences would be confined to their hand-picked delegates to the Third, or Fourth, or Seventh International, would nevertheless assure ultimate success to some future generation.

THIS opportunity came gliding over the horizon when the government undertook the operation of the railroads as a war emergency measure.

Now there was every reason in the world for centralizing control of transportation when the nation was at war except a socialistic one. Everybody was entirely too busy to give any thought to the socialists at that time, except when some particularly radical group offended the whole nation by an obstructionist or pacifist attitude toward the prosecution of the war. Fortunately these occasions were very few and of little importance.

Railroad executives endorsed the idea of centralized control in order that priority might be given to the movement of men and materials all along the line and gave their services freely in the work of organizing that control. Organized labor exhibited exactly the same patriotic attitude and everybody coöperated for the accomplishment of a single purpose—the movement with all possible speed of men and of those materials without which our armies would be utterly useless.

So no one thought of the possible implications of government operation of the railroads during an emergency except the socialists, and for a time they kept very quiet about it.

AFTER the war was over and all the glaring inefficiencies of government operation of transportation in times of peace became more and more apparent the socialists began to show their hand.

If the government could operate the railroads successfully in time of war there was no reason why it could not do the same thing in time of peace.

This may sound quite logical but if we accept it as sound reasoning we must deliberately overlook one or two most important factors. The government in its operation of the railroads was not at all concerned with economic laws which must be observed if any enterprise, whether it be a railroad or a corner grocery store, is to be, and remain, a permanent part of our economic structure. To the government the railroads simply represented physical property with which it could accomplish its war purposes and it was only concerned with setting up a situation where some central authority had control over the movement of trains, freight, and men anywhere in the United States without interference on the part of trains, freight, and men which were nonessential. Incidentally, government ownership and operation of transportation in Europe is due in a large measure to a feeling of "military necessity" on the part of government; the people of various European nations or of any other nation do not generally feel that the railroad systems of Europe are superior to ours or that their virtues are due to government ownership and operation.

THE American railroads got in a bad way in so far as the condition of their physical properties and rolling stock was concerned but no one gave a hoot as long as the war was on. The winning of the war was first in everybody's mind—except in the case of a certain type of pacifist with a twisted order of intelligence.

After the war was over, it was discovered that not millions but billions of dollars would be required to restore the railroads to their pre-war condition and general efficiency. The taxpayers became restless. They demanded that these railroads be restored to their former owners and operators. The government was in favor of such a move and finally handed the roads back.

It was estimated that government operation had cost the American taxpayers more than one and a half billion dollars.

But the taxpayers did not care very much. The war had been won and the winning of the war by the Allies had been, after all, the great objective.

NATURALLY this was not at all to the liking of the socialists, who had seen in the retention of the railroads by the government the first big step in their new program of nationalization of one industry after another until complete communism had been accomplished. But they could not say very much, for both the government and the vast majority of the people were intent on returning the roads to their former managements. Conscientious objectors to such a move might become extremely unpopular.

CASTING around for some other great national industry on which to center their attentions, their aggregate eye naturally fell on the light and power industry.

The rapidity of the development of the electric utilities had been phenomenal. Its properties represented billions of dollars of invested capital. Its very bigness rendered it particularly susceptible to criticism whether justified or not. It represented a very great accomplishment of men still alive and active in the public service. It produced a commodity which touched the lives of nearly every man, woman, and child in the United States. This commodity was fully as necessary as transportation, and, in fact, had made tremendous contributions to the development of transportation. The nation had been tremendously enriched by it and, therefore, a lot of folks must have acquired unearned riches.

The important place occupied by the electrical utilities in our economic

¶ "THE *only excuse as well as the only constitutional right which the government may have to undertake any developments of any kind on inland waterways except in the public domain is the improvement of navigation. . . . If water power is developed it must, ostensibly at least, be developed only as a by-product.*"

structure presented unlimited opportunities for the wrecking crew.

"WE'LL attack the electrical utility industry piece-meal," they said. "We'll preach municipal ownership of the local light and power plant in every community where there seems to be the slightest dissatisfaction with service or rates. We'll preach the doctrine of water powers as great national resources belonging to all of the people and with the creation of which man had nothing to do. We'll proclaim the fact that water runs down hill and costs nothing; that, therefore, no one man or set of men has any right to profit by this law of nature at the expense of his fellow men. We'll urge the completion of the Muscle Shoals project and the authorization of the Boulder Canyon and St. Lawrence river projects and their operation by the Federal government as yardsticks to prove that the government can generate and distribute electricity for less money than this terrible 'power trust' in charging a helpless people. Above everything else we'll concentrate on Muscle Shoals, Boulder Canyon, and the St. Lawrence river. Here are three great powers which are as yet undeveloped and private capital does not seem to be particularly interested in developing them. We'll get the government to do it and thus provide us with ammunition for our war on capitalism."

THE consistent failure of the socialists and their allied organizations to make any progress with that portion of the program which had to do with the development of a sentiment in favor of municipal ownership—the sentiment against it has been growing—brought undeveloped water powers more and more into the limelight of their regard until it finally settled down on these three projects.

The Wilson Dam was completed and the hydroelectric plant is now being operated by the government with a privately owned and operated company distributing the product.

Boulder Canyon Dam and its attendant electric power plant has been authorized. The St. Lawrence river development project is still on the lap of the gods.

IT is by no means my intention to deal with these three projects and their economic virtues and vices in this one introductory article. I propose to give each project a separate treatment in succeeding articles. What I do hope to do, however, is to give a sketchy picture of the events leading up to governmental action on them and show why they cannot be treated simply as three great water power projects having exactly the same characteristics both as to the reasons for their initiation and as to their ultimate future as government enterprises.

These three power development projects are entirely different, have nothing in common, and there can be no similarity in any discussion of them. Economic factors, of course, must be considered.

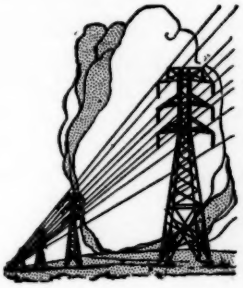
IT is a well-known fact that the only excuse as well as the only constitutional right which the government may have to undertake any develop-

How Uncle Sam's Three Navigation and Reclamation Ventures Were Diverted Into "Power Projects"

MUSCLE SHOALS *development began as a navigation project and was side-tracked into a nitrate issue by the emergencies of the World War:*

BOULDER DAM *began as a flood and reclamation control measure; power was a by-product designed to help pay interest on the investment:*

ST. LAWRENCE *is an international highway, but it has gradually become, potentially and politically, at least, a hydroelectric power project.*



ments of any kind on inland waterways except in the public domain is the improvement of navigation. If a river is navigable in any sense of the word and if it can be made more navigable by certain improvements, the Federal government has the right to step in and make those navigation improvements. If water power is developed it must, ostensibly at least, be developed only as a by-product.

The government has no authority over non-navigable streams or water falls which are a part of non-navigable streams.

THE Muscle Shoals development, while it started in life as a navigation improvement project, was taken entirely out of the class of all other Federal government water-ways enterprises by the war. The issue became one of nitrate supplies and the possibility of water power in connection with their manufacture brought hydroelectric power into a distinctly war picture. Improvement to navigation became a secondary matter. It, therefore, is resolved into a war emergency measure which has nothing to do with navigation, flood control, reclamation, or even agricultural relief as we will see in a future article.

WILSON Dam, having been authorized, was completed and becomes nothing more or less than a Federal government enterprise, the primary purpose of which is the generation and distribution of hydroelectric power—a scheme which is not contemplated in the Commerce Clause of the Constitution. The situation is exactly the same as though the war had never happened and the government had suddenly decided to build a great hydroelectric plant in Alabama for the purpose of going into competition with the citizens of Alabama. In normal times its authority over the utilization of the Tennessee river for the purpose of generating electric power extends only to the limits of the Federal Water Power Act placing

hydroelectric power developments by private persons or corporations on navigable streams under the authority of the Federal Water Power Commission and the measure of that authority is well defined by the law.

THE Boulder Canyon Dam project is in an entirely different category. It started in life as a flood control measure to protect the Imperial Valley from the devastating effects of a possible overflow of the Colorado river.

The government decided that the Colorado river is a navigable stream and that, therefore, it had some jurisdiction. When it was shown that flood control could be accomplished by the expenditure of not more than $15,000,000 for a dam further down the river, the possibility of reclaiming several hundred thousands acres of land in the Imperial Valley by means of the larger project was suggested. With navigation improvement, reclamation and flood control it seemed like a reasonable undertaking for the Federal government. Power was only a by-product which would help to pay interest on the investment.

AS a matter of fact the generation and distribution of hydroelectric power by the Federal government as a yardstick to prove that government ownership and operation is in the interests of the taxpayers has been the main purpose of the advocates of Boulder Canyon Dam all of the time.

Flood control has not interested these advocates because this could be accomplished with the expenditure of a small fraction of the cost of Boulder Dam but without a power project tied in with it. Reclamation interests only land speculators and promoters. Agriculture is already suffering from overproduction and reclamation is only another name for farmer exploitation.

All the navigation improvement in the world will never make the Colorado a commercial highway.

There remains only a government-owned and operated power project—which is exactly what our socialist and radical friends have been angling for all of the time. It hasn't even the excuse of war emergency.

THE St. Lawrence river must be placed in a third category. The St. Lawrence is not an inland waterway that comes under the jurisdiction of Congress or the War Department. It is an international highway, and by a treaty signed with Canada in 1909 no obstruction can be placed in the international section of it by either one of the two countries without the consent and approval of the other. Its improvement has been a matter of international discussion these many years, the interest of the United States being largely in the benefits which are supposed to accrue to the farmers of the middle Western states.

At present all thought of the St. Lawrence is centered on the development of a great New York state hydroelectric power project.

OUR socialist friends have joined eagerly in the proposal to build a large state-owned and operated generating plant along the international section of the St. Lawrence Rapids. It fits in better with their scheme of things and the future of the socialist movement than even Muscle Shoals or Boulder Dam.

The fact that over in London the British Government has an institution known as the Privy Council which might have at least something to say about "placing any obstruction" in the international section of the rapids and that England is still smarting under certain matters in connection with the operation of the Panama Canal does not seem to have occurred to their alert minds. The Constitution of the United States (Art. I § 10) is brushed aside with the same *insouciance* of a Norman Thomas campaigning for election as President of the nation whose very roots are embedded deeply in that same Constitution.

Potential or lack of potential markets for the product of such a plant are matters hardly worthy of discussion because, in their larger view of things, such a plant will eventually have the entire market which has been developed, at the cost of much hard work and money, on the part of private enterprise. When government ownership and operation enters the field, then comes monopoly and all that the word implies.

SUMMING up the situation, we have three proposed government-owned and operated enterprises with the same objective but entirely different in essential characteristics with the exception that there is not the slightest excuse for any one of them either in law or in fact.

How does it happen that the socialists have succeeded in creating so much public interest in them?

FOR some curious reason there is a rapidly growing belief in the United States that in water power lies the whole future of an adequate and continuous supply of electric light and power.

It is the great American Delusion.

Various groups, more interested in the power of the ballot than the power of the waterfall, are continually holding up a picture of America as a great desert in which all manufacturing must eventually stagnate because of a lack of sufficient electrical energy due to failure of fuel supplies. In this desert, they claim, the only oases are the undeveloped water power resources.

If these claims are true, then these oases are only mirages.

Geographic placement is a significant factor in estimating the value of a water power—approximately 80 per cent of the undeveloped water power of the country lies in the Rocky

¶ "THE *important place occupied by the electric utilities in our economic structure after the war presented unlimited opportunities for the wrecking crew. 'We'll attack the electrical utility industry piece-meal,' they said. 'We'll preach municipal ownership of the local light and power plant in every community where there seems to be the slightest dissatisfaction with service or rates. . . . Above everything else we'll concentrate on Muscle Shoals, Boulder Canyon, and the St. Lawrence river.'*"

Mountains and Pacific Coast region while the large market for power, unfortunately, is east of the Mississippi. We cannot move the water powers and industry refuses to move any considerable distance away from its own markets.

Great as have been the advances in the transmission of electricity, the art has not yet reached the stage where it is probable, or even possible, that electrical energy can be transmitted from the Pacific to the Atlantic. The majority of hydroelectric plants depend on fuel-burning plants for their economical operation. Many of the undeveloped water powers are extremely seasonal in their water flow and costly to develop. Hydro stations are individual and temperamental; no two are alike. Their costs vary with topography and geology and their values vary even more than their costs because they depend on the water available, the control that can be exercised over the water, and the distance their product must travel to reach an available market. And so on and so forth.

DUE almost entirely to the preaching of a false doctrine of power economics, water power has obtained a remarkable hold on the popular fancy. Its possibilities have become glorified and its advantages enlarged until the idea of its inherent cheapness and its profitable disposal in communities hundreds of miles away are firmly rooted in the public mind.

Water runs down hill and costs nothing; coal and oil must be mined and cost something; the waterfall is a manifestation of great power without apparent effort; fuel must be transported and burned; water power is America's greatest gift among a long list of natural resources and can never fall into the hands of the "interests" if the people are only intelligent enough to demand that the government prevent them from doing so.

These and innumerable other stock arguments are advanced periodically, mainly in the interest of government ownership and operation of public utilities.

WHAT the public has not understood in the past is that the justification for the development of any particular water power does not lie in the waterfall, no matter what its size may be and no matter how cheaply it can be developed. It lies at the other end of the transmission line which takes its product to the nearest available markets.

In these markets it must compete with other power producing agencies. The factor of marketing is of far greater importance than the factor of producing.

The question is: "What will the energy cost at the customer's meter?", and not, "What will it cost at the busbar of the generating station?"

It may cost only a few mills to produce a kilowatt hour of electrical energy and several cents to deliver it to the nearest market.

MUSCLE Shoals, as an individual, isolated hydroelectric power project competing with existing systems, is an economic monstrosity.

Even though we spend the many millions of dollars necessary to produce and distribute one billion kilowatt hours of wholesale power a year,

as provided for by Senator Norris' measure, this plant would cost the taxpayers two million dollars a year in operating deficits if it does no more than meet the present price for this class of service in its territory. If it undersells existing power companies, or if the government should go into the business of retailing power, this annual deficit would be much greater.[1]

BOULDER Canyon Dam, as an isolated and strictly individualistic power project, is even more of an economic monstrosity than Muscle Shoals.

It will cost a lot more money and will have to transmit its power 250 miles or more before it can reach a market of any considerable size. In that market it must compete with cheap oil and natural gas as power producing agencies and the Southern California Edison had made it very plain that water powers, even those located in California, cannot compete with fuel burning plants using cheap oil. The company has announced that for the present, at least, it will build no more hydroelectric plants.

THE St. Lawrence river power project lies too far in the future to require any further discussion here. As I will show in a subsequent article its main difficulties lie in heavy capital charges, international complications, and lack of market.

[1](See President Hoover's veto message dated March 3, 1931.)

THE relative values of hydroelectric power and steam generated electric power are rapidly changing. With the continued improvements in the efficiency of fuel burning plants which are yet to come to offset the increased power demands our coal and oil supplies will carry us indefinitely into the future in spite of the somewhat amusing picture of socialistic pessimists crying aloud in the wilderness over the immediate exhaustion of our natural resources and warning us that they will "run out on us" within the next fifty years.

Water power will always be inadequate to meet the demands for electrical power, and when our coal and oil is exhausted posterity will have to develop other substitutes. This, however, is so far in the future that, like the cooling of the sun, it need give us no concern today.

THE importance of water power in the development of industrial America should not be minimized, but just as long as it is considered as a cheap substitute for coal and oil, or as an unlimited source of electrical energy which can be produced and distributed for practically nothing by the waving of some governmental magic wand, its best development will not only be retarded but may even be indefinitely postponed.

Furthermore it should be noted that water power did not create the electrical industry—it was the industry which made possible the development of the water powers.

IN the next instalment—out October 1st—of this series of articles MR. GREENWOOD *will tell of the international political entanglements that are impeding the St. Lawrence power project; the subject has a particularly timely import in view of the political significance of the recent correspondence between Governor Roosevelt of New York and the White House.*

THE CONTEST OVER THE RIGHT TO REGULATE

The Utility Holding Company

Will the State or Federal Commission Prevail?

UNLIKE other corporations, the public utility must finance its extensions not through its earnings, which are limited to a "fair rate of return" in capital, but through outside borrowings. To render such necessary financial aid the holding company has come into existence—and with it has come the controversy over the methods of regulating it, particularly of regulating the fees paid to its subsidiaries for professional services. Will the authority to do this be given to the state commissions?

BY C. W. THOMPSON
ASSISTANT PROFESSOR OF ECONOMICS, UNIVERSITY OF IOWA

REGULATION of the utility holding company is inevitable. The big question that must now be settled in the forum of public opinion is whether such regulation shall be exercised nationally from the District of Columbia or from state capitals through the state public service commissioners.

IN the Seventy-First Congress, there was introduced in January, 1930 (S. B. No. 3869) a bill by Senator James Couzens of Michigan. It proposed to extend the authority of the present Federal Power Commission so as to include the interstate movement of electricity, the holding company which controls electrical utilities and other related groups which give advice and information. Formidable opposition has developed to the enactment of this or any other measure calculated to vest control of the utility holding company in the Federal government. It is the position of these opponents of Federal regulation that state regulation, either such as it is or such as it can be made, is sufficient to protect the public from any menace of the holding company, and far better than any Federal commission created for the same end.

THE holding company is an old form of control; economically sound and destined to endure. But it is no secret that, as now employed, it is a device susceptible to grave abuse. All of the important electrical holding companies are interstate in the sense that they control property located in more than one state. The importance of deciding in the near future whether we shall do our holding company regulation from Washing-

ton or from the state capitals, therefore, becomes apparent.

This article takes for granted that it is *legally* possible to regulate the holding company. It is directed to a consideration of whether national or state regulation is the more economically desirable.

LET us first examine some of the leading arguments against regulation of the holding company by any governmental agency at all.

Mr. Martin J. Insull, who needs no introduction to readers of PUBLIC UTILITIES FORTNIGHTLY, in addition to questioning the legality of holding company regulation as an attempt to regulate a character of business not directly affected with public interest, points out that the suggestion of holding company regulation is invariably based upon the erroneous assumption that holding companies can and do affect the rates charged to the public by the operating subsidiary utilities. His oft-repeated statement, that "rates are not based on securities issued, but upon the fair values of the property used and useful in the public service," is apparently regarded by him as the final argument, the reply to all further discussion of the matter. Mr. Insull assumes that if the rate-paying public cannot be affected, that is an end of the matter as far as governmental interference should be considered.

Mr. Halford Erickson, of the Byllesby Engineering and Management Corporation, goes even further. He says that there is nothing either in the valuation of utility securities held by holding companies or concerning the income from such securities that is not already subject to public supervision and regulation. He apparently believes that such powers as the average full-powered state commission now exercises is sufficient for the protection not only of the rate-paying public, but the investing public as well. As he served many years on the Wisconsin commission, Mr. Erickson's contention cannot be lightly dismissed.

ONE major difference in the holding company as used by utilities and by competitive business is that for the utilities it is a legitimate device because, as monopoly is one of the characteristics of a utility, the question of restraint of trade is not involved. One of the first of the utility holding companies was the United Gas Improvement Company, organized in 1882 to control a group of gas plants, though it has since entered the electrical field. During the nineties other holding companies were formed. The early difficulties in the marketing of the securities of the operating companies made their appearance inevitable. Holding company growth, however, was rather slow until the development of interconnection after 1910, and rapid strides came only with the war and post-war financial difficulties.

In the past ten years, the holding company movement has spread so rapidly that at present there is scarcely a private operating company which is not controlled by some one of a half dozen dominant groups.

In spite of the many criticisms which have been made against this development, it seems to me that it has been entirely natural; it has been the

product of economic forces. At the close of the war, the utilities (and business in general for that matter) found themselves in poor financial condition. The war had resulted in curtailed maintenance of plant and equipment. To make the situation worse, the utilities were faced with the necessity of meeting an ever-growing demand for service. Thus, it was imperative that they raise large amounts of new capital. One condition which distinguishes the utilities from competitive business is the necessity of financing extensions and additions by new borrowings. Theoretically at least, a utility is permitted to charge rates which will yield no more than the cost of service, including a fair rate of return; consequently, there can be no large volume of excess earnings to plow back into the business. Since four fifths or more of the eleven billions of invested capital in the electrical business is less than ten years old, it is obvious that the holding company was the only device by which such sums could be raised. The task was of such magnitude, that the independent, isolated plant could not hope to borrow at favorable rates in the face of an intense demand for capital on the part of all kinds of business.

IN order to make the best use of these funds invested in the operating subsidiaries, and in order to reduce the element of risk to a minimum, the holding companies have introduced many services for their subsidiaries. These groups have become such closely knit systems as is seen in the Bell system, that the line between holding and operating can scarcely be drawn. If the legality of holding company regulation be challenged, how is this separation to be made? Since the holding company has become such a vital part of the utility financial and operating structure, the question is no longer one of the right, but the duty of regulating them. Any attempt to challenge the legality of such regulation on the grounds that the holding company is "not affected with a public interest," is beside the point.[1] The difference between holding and operating is so slight, and the parent and subsidiaries are so closely connected that adequate regulation should not be excluded from the most important part of the financial and management functions of utility operations.

[1] See the recent Illinois Bell Telephone Case ([1930] 282 U. S. 133, P.U.R.1931A, 1) in which it is held "that the subsidiary companies were all parts of one integrated system."

¶ "SOME *of the larger interests have in addition to these service groups separate security marketing agencies to assist the subsidiary units. These services are paid for either by special fees, or by annual retainer fees, or both. The question naturally arises, what control can the state commissions exercise over these fee arrangements? A review of the leading court cases on this point leads to the conclusion that, until recently, the state commissions have not had the power to control these fee agreements.*"

THERE are two ways by which the holding company may affect the rates and service of the operating subsidiary. The first is through its charges, or fees for expert services, and the second is through its control over the capital structure and financial operations of the subsidiaries.

Let us look first to the present status of fees. The usual holding company has several kinds of service groups which stand ready to advise and assist its operating units. The most common of these services include engineering advice, legal advice, centralized purchasing, construction facilities, financing and accounting supervision, and periodic audits.

Some of the larger interests, such as the Insull group, have in addition to these services separate security marketing agencies to assist the subsidiary units. These services are paid for either by special fees, or by annual retainer fees, or both. The question naturally arises, what control can the state commissions exercise over these fee arrangements?

A review of the leading court cases on this point leads to the conclusion that, until recently, the state commissions have not had the power to control these fee agreements. Prior to the recent decision in the Illinois Bell Telephone Case, "the court had ruled that the test of the reasonableness of the expenditures and purchases of the subsidiary utility, as an element in its operating expense, was the value of the service or article to that utility. In the absence of unfair dealing or of evidence that the utility itself could have provided the articles or service or obtained them elsewhere at a less price, the price fixed between the companies would stand." [2]

This attitude of the courts has been based on the old legal notion of the freedom of contract, and, therefore, this contract was for all practical purposes unquestionable. The holding company contract which has received the most attention was the former arrangement between the American Telephone and Telegraph Company and its associates involving the payment of a fixed percentage of the associates' gross revenue as rentals for equipment. Obviously, in the absence of fraud, this contract would stand because the associate companies were not prepared to make these instruments, nor was there an outside agency in existence which could possibly underbid the American Company. Therefore, an agreement falling within these wide limits might well yield a handsome return to the American Company, simply because of its sole dominance and efficient organization.

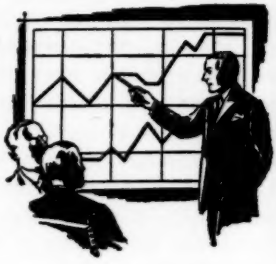
ECONOMISTS have generally regarded this theory of contract as a bit far fetched in this instance, because the contract between a parent and a subsidiary is not in fact a contract. It is not a voluntary agreement between independent groups of near equal strength, but rather an agreement the terms of which are dictated entirely by the controlling unit. It would seem that some such idea was in the background of the decision rendered in the recent Illinois Bell Telephone Case.[3] Here, the question of the reasonableness of the holding

[2] *Weekly Digest*, December 15, 1930, issued by the Joint Committee of National Utility Associations.

[3] Smith *v.* Illinois Bell Teleph. Co. (1930) 282 U. S. 133, P.U.R.1931A, 1, 12–15.

The Regulation of Utility Holding Companies Cannot Legally Interfere with Their Rights

"SINCE the utilities have been committed to regulation, it is difficult to see why they can object to the extension of regulation to these two phases of their business (regulation of interstate transmission of power and of the holding company). There can be no argument that such would interfere with their legitimate rights because the courts have always seen to it that neither property nor its use suffer from legislative encroachment."



company's charges was under review. The court said that there was no question that the services of the American Telephone and Telegraph Company were valuable, "but there should be specific findings by the *statutory court* with regard to the *cost of these services* to the American Company. . . ." (The italics are mine.)

The conclusion seems to be warranted that the court has reversed its stand, and now is adopting as a standard of reasonableness the cost of the service rather than the value of the service rendered. One question bearing on state commission regulation is suggested by this passage, and that is, why the statutory court rather than the commission is directed to inquire into the costs of the holding company services. The courts are not equipped to make such an investigation, and if this passage is strictly interpreted, the commissions are still helpless in the situation of cost analysis.

REGARDLESS of the eventual interpretation of the rights of the commissions under this decision, two implications seem rather plain:

First; the view that the Bell system is an integrated unit, points to the obvious "public interest" aspect of the holding company.

Second; the easier way of performing the mandate on cost determination is by means of a Federal commission.

If each state commission is to be invested with the power of auditing holding company charges, there will result duplication of effort, annoyance, and cost to both the commissions and the holding companies. A Federal commission to do the job would be more economical to all parties concerned, because by periodic audits it could make available to the forty or more state commissions these cost figures.

PROBABLY more important than the fees charged by the holding companies is the consequence of their control over the financial structures of the operating companies. Every reference to this point made by utility leaders which I have seen emphatically denies

that the holding company can exert any influence upon the rates charged by the operating groups as a result of security control. The line of reasoning is simply to say that regulatory groups disregard the capital structure and consider only the "actual" value which now generally means present or reproduction value of the property used and useful in order to arrive at a rate base. This is the figure, irrespective of the sums of stocks and bonds outstanding, which is the fair value upon which a "reasonable" rate of return may be earned.

To come directly to the point at issue, this is the old question of the effect of over-capitalization upon regulated monopoly. The utility leaders deny that there can be any effect of over-capitalization upon rates, as was seen in Mr. Martin J. Insull's statement that securities have no effect upon the rates charged the customers. This position is, theoretically at least, questionable. The public utilities excluding the railroads, find it necessary to float about one billion of dollars worth of new securities annually. In order to find a satisfactory market for such quantities of securities, it is necessary for the utilities to have a good credit rating—in other words, their record of earnings on outstanding securities must be good.

The investor is not vitally concerned with the commission determined investment figures of the industry; he is more concerned with the annual earnings per share of stock this year and in the years past, or how many times over the bond interest requirements the earnings are. In short, he is only interested in the interest and dividend records, and in comparative statements of surplus. Thus, the necessity of good credit standing makes the problem of over-capitalization a vital one in the economics of regulated monopoly.

For purposes of illustration, let us assume that for a certain utility the state commission has allowed a valuation of $100,000. Let us also suppose that this company is capitalized at a figure of $150,000, divided in the usual utility ratio of 60 per cent in bonds, 15 per cent in preferred stock, and the balance in common stock. The bonds bear interest at the rate of 5 per cent, and the preferred stock has a specified dividend rate of 6 per cent. If the gross earnings of this company are in the ratio of

Statement Showing Dividends of Utility Capitalized for $150,000 on a Valuation of $100,000

Gross	$25,000	—¼ of commission valuation
Operating expense	17,000	
	$8,000	—8 per cent on valuation, but only 5+ per cent on capital structure
Bond interest	4,500	
	$3,500	
Preferred stock dividend	1,350	
Balance for common stock, dividend, and surplus	$2,150	

one to four on the valuation, and its operating expenses are but a conservative 68 per cent of gross earnings, then its income statement would be as shown at the bottom of preceding page.[4]

This inflated capital structure allows something less than 6 per cent earnings on the common stock, a rather poor showing to the common stockholder.

Now, let us compare another company which has a capital structure of $100,000, or equal to its rate-making value which is divided in the same 60-15-25 ratio. The income statement for this second company would be as shown by the table at the foot of this page.

In this instance, the earnings on common stock are over 16 per cent. In both these illustrations it will be noticed that the commission allowed rates which yielded an 8 per cent return on the valuation. The financial standing of the second company whose capital structure approximated this valuation is far superior from every investment analysis.

There may be, then, a close connection between rates and over-capitalization. Credit requirements and service obligations make it imperative that the utilities have good credit ratings. As securities have been so thoroughly scattered into the hands of innocent investors, commissions may be forced to recognize situations of over-capitalization in order to secure the necessary credit standing to the over-capitalized utility to enable it to meet its future service obligations.

In the above illustration, it might be necessary to raise the rates of the over-capitalized company to yield net earnings of about $10,000 rather than $8,000 in order to leave a net of 10 per cent for the common stock. This would improve its credit rating, but would still leave it weaker than the company of the second illustration.

In the above situation, it was assumed that the over-capitalized utility would simply be content to continue with an impaired credit standing. But such would probably not be the case. If $25,000 were all the revenue the commission would al-

[4] In determining this operating ratio, I used L. R. Nash's formula, R=100—8I/E. This formula is designed to show the maximum amount which operating expenses may be, and still leave a return of 8 per cent on the investment. In this formula, I is investment; E the earnings, or gross revenue.

Dividends on Common Stock Are Highest When Capitalization Does Not Exceed Valuation

Gross	$25,000	
Operating expense	17,000	
	$8,000	—8 per cent of valuation and 8 per cent on the capital structure
Bond interest	3,000	
	$5,000	
Preferred stock dividend	900	
Balance for common stock, dividend, and surplus	$4,100	

low, the management would probably attempt to curtail a part of the maintenance, or decrease the charges for depreciation and obsolescence (included as operating expenses in the above illustration), or effect such other short-sighted economies as it could in order to increase the net profit available for dividends.

The result will soon be that the service rendered will not be as good as it was because, under skimped maintenance, equipment will deteriorate, and incidental features such as prompt attention to complaints and service interruptions will be either eliminated or reduced below the proper level. This is more injurious to the consumer than increased rates would have been. Of the two alternatives, good service at a higher rate, although the rate increase be the result of over-capitalization, is preferable to poorer service at a lower rate which would have been adequate had the company's valuation and capital structure been the same.

The relationship between this discussion and the holding company is simply this: The holding company always controls the financial policies of its subsidiaries. It can vote itself excessive construction contracts for new financing. It has at times paid excessive amounts for operating companies. As the holding company owns from 51 to 100 per cent of the subsidiary's voting stock, it may easily direct its financial policy to the end that the operating unit pays excessive fees for services, and write into its books an excessive purchase price, or excessive construction costs. Either of these last two things will result in over-capitalization.

It is not necessary to prove that the holding companies have over-capitalized themselves or their subsidiaries, though many students believe that there is good evidence of this, nor to prove that the commissions have been forced to recognize over-capitalized structures in rate making. The fact that 95 per cent of the electrical industry is in the hands of private enterprise, and the fact that a half dozen groups control most of this, is sufficient evidence to warrant our taking steps to prevent such a possibility.

MY conclusion is that the holding company must be included within the jurisdiction of government regulation. My reasons are as follows:

The fees charged by and the financial control of the holding company are practically outside the effective jurisdiction of the states. By what process will the state of Iowa, for instance, investigate an electrical system, located in Chicago, which has operating interests in Iowa, or the American Telephone and Telegraph Company in New York city, which controls the telephone facilities of that state? The only satisfactory conclusion is to follow the suggestion of the public service commission of New Hampshire and give to the Federal Power Commission the duty of holding company regulation.

THE determined opposition of the utilities to Federal control of either interstate transmission of electricity or the utility holding company suggests that they may be covering practices which such control would stop.

Since the utilities have been committed to regulation, it is difficult to see why they can object to the extension of regulation to these two phases of their business. There can be no argument that such would interfere with their legitimate rights because the courts have always seen to it that neither property nor its use suffers from legislative encroachment.

The ruling sentiment in this country favors private ownership and operation of the utilities under adequate regulation. When the utilities were small, local city council regulation was sufficient. But they soon outgrew the artificial bounds of city limits; so beginning in 1907, the state commission has become the general regulating agency. Now the utilities are outgrowing the state boundaries and many of us believe the time has come to extend regulation to meet this growth. One thing is certain—there is just enough sentiment in this country favoring municipal ownership, that a prolonged opposition to a program of extension of Federal control to the holding company and interstate transmission will swell the volume of this sentiment. Many people who now believe in private enterprise may decide that it is easier to destroy the private interests than attempt to force them to submit to added regulation.

In my judgment, the wise course will be to consent silently to the extension of Federal regulation to the utilities. If it is not supplanted by the municipal ownership movement, Federal regulation is bound to come, and the longer the opposition, the greater the ill-will generated against the public utility companies.

According to the News Reports—

THE direct cost of accidents to each of the 300,000 employees of light and power companies is approximately $25 a year.

* *

HIGH school boys and college students of liberal tendencies have banded together in Portland, Oregon, to form a "Junior Municipal Ownership League."

* *

So completely has the motor car and the bus supplanted the horse-drawn vehicle that a buggy was sold at auction in Winchester for 40 cents—presumably as a museum piece.

* *

A CHECK-UP on one railroad line over a six-months' period revealed that 47 per cent of grade-crossing accidents were due to automobile drivers who tried to cross in front of approaching trains.

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

ERNEST T. CLOUGH
Financial writer.

"The public utility industry is benefiting from the depression."

MERLE THORPE
Editor and author.

"Government operation of business never creates anything—except jobs."

AMOS PINCHOT
New York lawyer and publicist.

"The power-and-light industry—and here it closely resembles the bootlegging industry—is essentially a racket."

O. B. LOVETTE
Congressman-elect from Tennessee.

"I would rather see all of the buildings at Muscle Shoals destroyed than have them go into the hands of the Power Trust."

W. ALTON JONES
Former president, National Electric Light Association.

"I believe the average citizen is intelligent enough to see the great difference between the low cost of electricity and the high cost of politics."

THOMAS F. WOODLOCK
Financial writer.

"Prudent investment . . . is an excellent thing provided that both parties agree to periodical revision when necessitated by large changes in the price level."

FELIX FRANKFURTER
Professor of Public Utility Regulation, Harvard Law School.

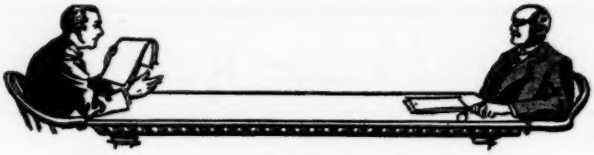
"It is wholly wrong to expect civilized standards of public service from officials whose salaries are too low to enable them to meet the minimum standards of a cultivated life."

FRED W. SARGENT
President, the Chicago and North Western Railway.

"Every time we relieve individuals and local communities of some of the responsibility of local self-government, and transfer the functions to a centralized Federal government, we weaken the ability of our citizens to govern themselves."

WILLIAM ELLIOTT RICHMOND
San Diego Consolidated Gas & Electric Company.

"Long after the present great intellects who now harass industry have gone to join their progenitors, the utilities will proceed calmly on their allotted way in complete ignorance of the efforts made to wreck them because of political aspirations."



What the Legal Profession Is Doing to Help Regulation

The purposes, methods, and personnel of the Sections of Public Utility Law, created by the members of the American Bar Association as a step toward the clarification of the law and the improvement of legal procedure.

By WILLIAM L. RANSOM

CHAIRMAN OF THE SECTION OF PUBLIC UTILITY LAW OF THE AMERICAN BAR ASSOCIATION

THROUGH its Section of Public Utility Law, the American Bar Association has taken steps for the study and possible clarification of several subjects in the field of public utility law.

The Section of Public Utility Law is the branch or affiliated department of the American Bar Association, which devotes itself particularly to problems of law pertaining to the public services. The members of the section are the members of the American Bar Association who are particularly interested in public utility law.

Meetings of the section are held annually, in connection with the annual convention of the American Bar Association, in the same city and on earlier days of the same week. It is only one of several sections of the association, each dealing with special fields or phases of the law.

The committees meet as occasion permits or seems to require; but the bulk of the work is necessarily carried on by correspondence, under the administrative leadership and direction of its chairman. Each committee is autonomous as to its procedure.

These remedial studies are going forward under the general supervision of the council, which is the governing body of the section.

The council is composed of eight members and four officers *ex-officio*, all elected by the section. The council is responsible to the American Bar Association and the executive committee of the association for conducting the affairs of the section along lines consistent with the charter and by-laws of the American Bar Association and the by-laws of the section itself. Reports of standing and special committees of the section are made to the council and the section; but they do not and cannot become ut-

terances of the American Bar Association, unless and until they are approved by the association or by its executive committee.

THE organized bar should be, and generally is, in Chief Justice Hughes' fine phrase, "a round-up of intelligent discontent."

The Section of Public Utility Law has become the impartial forum and the clearing house for the constructive ideas and approved experience of those who are wrestling with the problems of public utility law in any capacity. To an increasing extent it has enlisted the interest and the coöperation of lawyers engaged on the so-called "public side," as members of commissions or as attorneys for commissions or municipalities. Its meetings have promoted mutual understanding, respect, and the fair handling of legal questions in this field.

In an address before the section at the Philadelphia meeting of the American Bar Association in 1924,[1] I said some things which I venture to quote, because they expressed a point of view which is finding wider acceptance:

> "Here [in the section] is a logical place for thought and leadership. This section is the only forum in which the legal representatives of companies, commissions, municipalities, investment concerns, and other lawyers interested in this branch of the law, meet in friendly, open-minded fashion, and would feel free to act wholly in the interests of an orderly development of the law. . . . The bar should try to fulfil soon its traditional function of leadership and clarification. . . .
>
> "In this Section of Public Utility Law, we meet as members of a great profession and not at all as attorneys for companies, commissions, municipalities, or governmental or commercial agencies. In other forums, we appear as zealous advocates of the supposed interests of our respective clients. We feel there that out of the adequate presentation of opposing views and the clash of the importunities of 'public' and 'private' interests supposed to be in conflict, will come, and does come, a sound result, compatible with the real public interest. The soundness of this concept of the functions of courts and advocates is the basis of law-governed civilization; but in the professional bodies formed to aid in the development of the law, we properly leave behind any rôle of representation or pleading.
>
> "Our responsibilities in this section are only to our profession and to the sound progress of American institutions and to the orderly development of the specialized body of law entrusted primarily to our trusteeship. The law of public service enterprises affects ultimately the daily life—the health, comfort, convenience, and prosperity—of practically every person in the United States. It is a new and vital body of law—largely the growth of our own generation, still in a formative state as to many of its phases, still plastic under the pressure of the rise of new industries, new uses, and the challenge of new concepts of public and private rights.
>
> "The ultimate determinations of the law of this subject, which in turn will vitally affect the happiness and prosperity of countless thousands of human beings throughout time to come, will depend upon the skill with which the actualities of modern business and the realities of the public interest are soon marshalled and presented by lawyers, many of whom are members of this section.
>
> "Under such circumstances, it has always seemed to me that the deliberations of this section must be *quasi* judicial in outlook."

THE declaration of purposes of the section, as set forth in its by-laws, reflects in its second paragraph its representative character:

> "In addition to furtherance of the chartered purposes of the American Bar Association, the purpose of the Section of Public Utility Law shall be to bring together for better acquaintance and mutual advantage those members of the bar who are interested in the law governing the public services as from time to time developed and defined; to hold meetings, conduct discussions, make studies, surveys, and analyses, as to the law of public utilities under private or public operation; and to formulate and submit, to the section and the association, such reports and recommendations as may be deemed useful to the profession and advisable in the public interest.
>
> "An especial purpose of the section is de-

[1] Report of American Bar Association, Volume XLIX, for 1924, pages 682 to 684.

> clared to be to further the public interest as the prime factor in the development of the law of public utilities, and to provide a common meeting-ground and impartial forum for those members of the bar who are engaged in dealing with problems of utility law in any capacity, whether as members of or attorneys for public regulatory bodies, or as attorneys for corporations or investors in this field, or otherwise."

THE broad purposes for which the committees were brought into being are reflected in their personnel, and may be summarized in two paragraphs from the letters of appointment:

> "Your special committee may appear to be larger in membership than would ordinarily be regarded as most effective, if it were created to function on any definite time schedule or to further any particular views or conclusions. Neither is the case. My chief purpose has been to create committees which will furnish a fair cross-section of professional opinion, covering all angles of interest and relationship to utility law, and conversant with conditions in every part of the country. Nearly every state is represented in the committees authorized by the council. . . .
>
> "The subjects selected need genuinely to be restudied. . . . It is hoped that through a comprehensive survey of these important fields of the law, by truly representative committees acting broadly in the public interest, the clarification of the law of these subjects may be advanced and a contribution made to an informed professional opinion concerning them."

As a greater number of lawyers identified with governmental bodies become interested in the work of the section, it will be possible to broaden still further the representative character of its committees.

PERHAPS the most ambitious project undertaken by the council and the section is a study of ways and means of improving the procedure in the trial of rate litigation before the commissions and in the courts, with especial reference to developing more compact, economical, and expeditious handling of such cases. This is one of the most timely and conspicuous issues in the field of regulatory law. It is one as to which there has been and is a considerable volume of lay criticism of the courts, commissions, and of the regulatory law itself, for failure to develop less dilatory procedures for rate reductions and revisions.

There seems to be a good deal of propriety in launching at this time an open-minded and remedial survey of this whole subject, first, to find the facts, and then to offer for consideration such constructive suggestions as may appear expedient in the light of the disclosed conditions. Research will of necessity precede recommendations in this field. Many constructive suggestions have been made, and will be weighed in the light of the factual data. It may then be found possible to make some headway towards re-

¶ "AN *especial purpose of the section is declared to be to further the public interest as the prime factor in the development of the law of public utilities, and to provide a common meeting-ground and impartial forum for those members of the bar who are engaged in dealing with problems of utility law in any capacity, whether as members of or attorneys for public regulatory bodies, or as attorneys for corporations or investors in this field, or otherwise."*

moving the grounds for some of the prevalent criticisms of the regulatory law and procedures.

To grapple with this important task, the section has assembled what will be recognized as obviously the most experienced and representative group of lawyers which has ever devoted itself to this phase of the law. Indeed, it may be said that no other organization could enlist the services of so able and diversified a group of men for unbiased study of this subject. All parts of the country and many angles of interest and experience are on the roster of this committee.

The chairman of the committee is Professor George Gleason Bogert of the University of Chicago Law School, author of several standard textbooks on law and active worker for many years in the National Conference of Commissioners on Uniform State Laws. The full membership of the committee is as follows:

JUDGE FRANK E. ATWOOD, Judge of the Supreme Court, Jefferson City, Missouri.
CHARLES G. BLAKESLEE, chief counsel, New York State Public Service Commission, Albany, New York.
GEORGE G. BOGERT, chairman, University of Chicago Law School, Chicago.
CHARLES K. BURDICK, Dean of the Cornell Law School, Ithaca, New York.
KARL E. BURR, First National Bank Building, Columbus, Ohio.
EX-JUDGE E. E. CORFMAN, member, Utah Public Utilities Commission, Salt Lake City, Utah.
ARTHUR T. GEORGE, general attorney, Railroad Commission of California, California State Building, Civic Center, San Francisco, California.
JACOB H. GOETZ, Whitman, Ransom, Coulson and Goetz, 120 Broadway, New York City.
GEORGE R. GRANT, 50 Oliver Street, Boston, Massachusetts.
NATHANIEL T. GUERNSEY, Platt, Taylor and Walker, Equitable Building, New York City.
EX-JUDGE J. H. HENDERSON, commerce counsel, Iowa Board of Railroad Commissioners, 812 Forrest Avenue, Des Moines, Iowa.
OSCAR C. HULL, president, Michigan State Bar Association, Oxtoby, Robison and Hull, Dime Savings Bank Building, Detroit, Michigan.
HUGH LA MASTER, assistant attorney general, Department of Justice, Lincoln, Nebraska.
SCOTT M. LOFTIN, Graham Building, Jacksonville, Florida.
EDMUND MORRIS MORGAN, Harvard Law School, Cambridge, Massachusetts.
HUGH M. MORRIS, former United States District Judge, Du Pont Building, Wilmington, Delaware.
LEONARD A. PIERCE, 465 Congress Street, Portland, Maine.
FRANK T. POST, Post, Russell, Davis and Paine, Exchange Building, Spokane, Washington.
FRANK A. REID, 2 Rector Street, New York City.
ALBERT J. STEARNS, chairman, Maine Public Utilities Commission, Augusta, Maine.
EDSON R. SUNDERLAND, University of Michigan Law School, Ann Arbor, Michigan.
EX-JUDGE ARTHUR E. SUTHERLAND, special master in *International Railway Company of Buffalo v. Public Service Commission* (U. S. Dist. Ct.; W. Dist. N. Y.), Lincoln-Alliance Building, Rochester, New York.
JOHN H. WIGMORE, professor of law, Northwestern University, Chicago, Illinois.
LOTHROP WITHINGTON, Withington, Cross, Proctor and Park, Tremont Building, Boston, Massachusetts.

THE acute constitutional and legal issues as to the boundaries between the state and Federal regulatory powers over public services, and the fundamental consequences of extending the Federal authority at this time are to be studied by another representative special committee, whose utterances will undoubtedly carry great weight, if they proceed along the lines of a clarification of the fundamentals of the great constitutional issues and a clear analysis of the law and the facts involved in some of the present issues between the state and Federal power.

Chairmen or members of state commissions in Alabama, Illinois, Massachusetts, Nebraska, and New York, counsel for state commissions in Tennessee and West Virginia, a justice of the supreme court of Florida, a member of Governor Roosevelt's St. Lawrence Power Development Commission, the acting general counsel for the Federal Power Commission, and three former presidents of the American Bar Association, are among the members of this influential committee. The full membership follows:

GEORGE ROBERTS, chairman, Winthrop, Stimson, Putnam and Roberts, 32 Liberty street, New York City.
MONTE APPEL, Munsey Building, Washington, D. C.
ROY H. BEELER, attorney, Tennessee Railroad and Public Utilities Commission, Nashville, Tennessee.
JOHN G. BUCHANAN, Smith, Buchanan, Scott and Gordon, Union Trust Building, Pittsburgh, Pennsylvania.

J. WARD CARVER, former attorney general of Vermont, Aldrich Building, Barre, Vermont.
WILLIAM CHAMBERLAIN, 105 West Adams Street, Chicago, Illinois.
JULIUS HENRY COHEN, member New York State St. Lawrence Power Development Commission, and counsel Port of New York Authority, 74 Trinity Place, New York City.
JOHN F. CORDEAL, McCook, Nebraska.
FRED H. DAVIS, Justice of the Supreme Court of Florida, Tallahassee, Florida.
THOMAS W. DAVIS, 400 North Front Street, Wilmington, North Carolina.
WILLIAM J. DONOVAN, former Assistant Attorney General of the United States; counsel for the New York State Commission on Revision of the Public Service Law; 41 Broad Street, New York City.
HUGH DRAKE, member, Nebraska State Railway Commission, Lincoln, Nebraska.
CHARLES W. HADLEY, chairman, Illinois Commerce Commission, Springfield, Illinois.
WILLIAM V. HODGES, Hodges, Wilson and Rogers, Colorado National Bank Building, Denver, Colorado.
J. F. LAWSON, acting general counsel, Federal Power Commission, Washington, D. C.
FREDERICK W. LEHMANN, Merchants-Laclede Building, St. Louis, Missouri.
F. M. LIVEZEY, counsel for the Public Service Commission of West Virginia, Huntington, West Virginia.
CHESTER I. LONG, Long, Chamberlain, and Nyce, First National Bank Building, Wichita, Kansas; National Press Building, Washington, D. C.
CLARENCE E. MARTIN, Peoples Trust Building, Martinsburg, West Virginia.
DOUGLAS M. MOFFAT, Cravath, De Gersdorff, Swaine and Wood, 15 Broad Street, New York City.
J. BLANC MONROE, Monroe and Lemann, Whitney Building, New Orleans, Louisiana.
NELSON PHILLIPS, Phillips and Phillips, Kirby Building, Dallas, Texas.
EX-JUDGE GEORGE B. ROSE, Rose, Hemingway, Cantrell and Loughborough, Little Rock, Arkansas.
ROBERT E. L. SANER, Magnolia Building, Dallas, Texas.
SILAS H. STRAWN, First National Bank Building, Chicago, Illinois.
BENTLEY W. WARREN, Warren, Garfield, Whiteside and Lamson, 30 State Street, Boston, Massachusetts.
HENRY G. WELLS, commissioner, Department of Public Utilities, Boston, Massachusetts.
HUGH WHITE, president, Alabama Public Service Commission, Montgomery, Alabama.
GEORGE B. YOUNG, 131 State Street, Montpelier, Vermont.

THE pronouncements of this committee may deal with some of the livest of constitutional and legal issues. The movement of electrical energy in interstate commerce, the most recent developments in litigation and legislation as to natural gas, the proceedings before the Federal Power Commission, the constitutionality of the Federal Power Act, the proposals for regulation of motor bus and pipe line transportation, the demand of the states for preservation of the integrity of their regulatory concepts, the negotiations for "compacts" or treaties between states beset with intricate problems of rate control—these are only a few of the acute and vital matters to which the report of this committee may advert. Whatever this notable group may say on these matters should be a contribution to the literature of the subject.

SOME of the newer problems which press for solution in the utility field concern the limitations, if any, upon the powers of regulatory authorities to review the decisions of management and to substitute a regulatory judgment for the policies determined upon by the owners and managers of the enterprise. Legislation in several of the states has recently undertaken to carry the activities of regulatory bodies across boundaries hitherto deemed to denote the domain of management.[2]

The prevalent point of view, up to this time, has apparently been that the commissions were created to protect impartially the interests of customers, investors, and companies, and that accordingly a commission was authorized to intervene when anything was done or threatened by a utility which jeopardized the public interest as to rates, securities, or service. A finding of unreasonableness and impropriety, from evidence submitted at a hearing held on notice, was a prerequisite of a remedial order for changes in the existing rates, regulations, or practices.

In the absence of such an issue directly affecting the public interest, usually an issue sponsored by com-

[2] See article on "Amendments to the New York Public Service Law in 1930," in the *New York State Bar Association Bulletin*, November, 1930 (Vol. 2, No. 9; pages 510, 512, 513).

The Purpose to Improve the Procedure in the Trial of Utility Rate Regulation

"PERHAPS the most ambitious project undertaken by the council and the section is a study of ways and means of improving the procedure in the trial of rate litigation before the commissions and in the courts, with especial reference to developing more compact, economical, and expeditious handling of such cases. This is one of the most timely and conspicuous issues in the field of regulatory law."

plainants, the commission supervised and kept close familiarity with utility operations, prescribed the accounting routine and classifications, required frequent and periodic reports, verified the vouchers for capital expenditures and the like, but without active supervision of the conduct of the business of the utility by its own directors and officers. In a proceeding as to rates, service, or securities, the commission might, and sometimes did, for good cause shown, disregard or disallow any item of operating expense or capital expenditure, shown in the books of account as kept pursuant to the commission's uniform system; but the commission was not empowered to intervene in the conduct of the business or the details of the corporate affairs, as such, unless there was a pending complaint, or at least a pending inquiry, as to matters affecting the public interest in rates, service, or securities.

LEGISLATION in some states, and the rulings of commissions in others, have seemed to introduce a new principle or concept into the continuity of commission control. Management policies are reviewed and revised, directly and drastically. The traditional borders between regulation and management are more honored in the breach than in their observance. There is need that the subject be reëxamined.

Many angles of viewpoint will be recognized as represented in the following special committee:

KENNETH F. BURGESS, chairman; Cutting, Moore and Sidley, 11 South La Salle Street, Chicago, Illinois.
ROBERT H. ANDERSON, Graham Building, Jacksonville, Florida.
GEORGE E. BEERS, 205 Church Street, New Haven, Connecticut.
SMITH W. BENNETT, Columbus, Ohio.
FREDERICK K. BEUTEL, College of Law, Tulane University, New Orleans, Louisiana.
WILLIAM W. BRIDE, general counsel, District of Columbia Public Utilities Commission, Washington, D. C.
W. H. BURGES, Turney, Burges, Culwell, and Pollard, First National Bank Building, El Paso, Texas.
LOUIS S. CARPENTER, 165 Broadway, New York City.
CHARLES T. CATES, JR., Cates, Smith, Tate and Long, Knoxville, Tennessee.
NOEL T. DOWLING, Columbia Law School, New York City.
H. M. FENNEMORE, Fleming Building, Phoenix, Arizona.
MITCHELL D. FOLLANSBEE, 137 South La Salle Street, Chicago, Illinois.
LOWELL M. GREENLAW, Pullman Building, Chicago, Illinois.
MILTON S. GUNN, Gunn, Rasch, Hall and Gunn, Helena, Montana.
RICHARD T. HIGGINS, chairman, Connecticut Public Utility Commission, Hartford, Connecticut.

GEORGE A. LEE, Flansburg and Lee, Sharp Building, Lincoln, Nebraska.
GEORGE B. LOGAN, Cobbs and Logan, 506 Olive Street, St. Louis, Missouri.
HENRY L. MCCUNE, McCune, Caldwell and Downing, Kansas City, Missouri.
SAMUEL W. MURPHY, 2 Rector Street, New York City.
H. T. NEWCOMB, 32 Nassau Street, New York City.
HORACE H. POWERS, St. Albans, Vermont.
GEORGE H. SHAW, Lee, Shaw and McCreery, First National Bank Building, Denver, Colorado.
RALPH D. STEVENSON, 20 North Wacker Drive, Chicago, Illinois.
WALDEMAR Q. VAN COTT, Van Cott, Riter and Farnsworth, Walker Bank Building, Salt Lake City, Utah.
BERNARD F. WEADOCK, 20 Pine Street, New York City.
WILLIAM M. WHERRY, JR., Wherry and Wight, 120 Broadway, New York City.

THE broad character of the work of the section, geographically, may be gauged from the fact that it has taken up a subject which has recently been particularly vital in California, Oregon, and Washington, and which may at any time become important in states far distant from the Pacific Coast. Litigation in several localities in California has emphasized the need for an impartial study and clarification of the law of valuing utility property taken under the exercise of eminent domain, with especial reference to severance damages where part of an interconnecting system is taken. Highly controversial issues of law have arisen, on which open-minded analysis will not be amiss.

The representative committee which has undertaken this task is headed by John H. Lewin, the people's counsel for the Maryland Public Service Commission. With him are associated, on the one hand, lawyers like Messrs. C. P. Cutten, Chaffee E. Hall, and Roy V. Reppy, all of whom have had active experience in the California controversies; on the other hand, the committee includes such independent thinkers as Chief Counsel McDonald of the Missouri commission, Professor Robert L. Hale of the Columbia Law School, Assistant Corporation Counsel Fertig of New York city, Professor William R. Vance of the Yale Law School, and Professor C. M. Updegraff of the University of Iowa. The full membership of this group is as follows:

JOHN H. LEWIN, chairman; people's counsel, Maryland Public Service Commission, Baltimore, Maryland.
LOUIS L. BABCOCK, Locke, Babcock, Hollister and Brown, Manufacturers and Traders Building, Buffalo, New York.
GEORGE G. BOGERT, University of Chicago Law School, Chicago, Illinois.
GEORGE T. BUCKINGHAM, De Frees, Buckingham, Jones and Hoffman, 105 South La Salle Street, Chicago, Illinois.
J. B. CHEADLE, School of Law, University of Oklahoma, Norman, Oklahoma.
C. P. CUTTEN, 245 Market Street, San Francisco, California.
JOSEPH J. DANIELS, Baker and Daniels, Fletcher Trust Building, Indianapolis, Indiana.
J. CARROLL EDWARDS, 165 Broadway, New York City.
M. MALDWIN FERTIG, assistant corporation counsel, Municipal Building, New York City.
ROBERT L. HALE, Columbia Law School, New York City.
CHAFFEE E. HALL, Earl and Hall, Standard Oil Building, San Francisco, California.
JOSEPH W. HENDERSON, Rawle and Henderson, Packard Building, Philadelphia, Pennsylvania.
J. A. C. KENNEDY, Kennedy, Holland and De Lacy, City National Bank Building, Omaha, Nebraska.
CLARENCE M. LEWIS, former counsel, Transit Commission, 43 Cedar Street, New York City.
RANDALL J. LE BOEUF, JR., Le Boeuf and Winston, 15 Broad Street, New York City.
D. D. MCDONALD, counsel, Missouri Public Service Commission, Jefferson City, Missouri.
LOVICK P. MILES, Miles, Waring and Walker, Sterick Building, Memphis, Tennessee.
ROY V. REPPY, Edison Building, Los Angeles, California.
CHARLES ROSEN, Rosen, Kammer, Wolff and Farrar, New Orleans, Louisiana.
JOHN BELL SANBORN, Gay Building, Madison, Wisconsin.
ELMER B. SANFORD, 50 Church Street, New York City.
TIMOTHY J. SHEA, Cullen and Dykman, Brooklyn, New York.
C. P. SISSON, former attorney general of Rhode Island, now Assistant Attorney-General of the United States, Department of Justice, Washington, D. C.
FRANK L. STEPHAN, former attorney general of Idaho, Twin Falls, Idaho.
C. M. UPDEGRAFF, Law Building, State University of Iowa, Iowa City, Iowa.
WILLIAM R. VANCE, Yale Law School, New Haven, Connecticut.
W. BEW WHITE, Bradley, Baldwin, All and White, Birmingham, Alabama.

THE council also created a committee to study the new and significant legal problems arising from the standards of accounting prescribed for public utilities by Federal and state authority, with special reference to the question whether, through such accounting regulations, the substantial rights of persons and property may be

¶ "THE *pronouncements of this committee may deal with some of the livest of constitutional and legal issues. The movement of electrical energy in interstate commerce, the most recent developments in litigation and legislation as to natural gas, the proceedings before the Federal Power Commission, the constitutionality of the Federal Power Act, the proposals for regulation of motor bus and pipe line transportation, the demand of the states for preservation of the integrity of their regulatory concepts . . . these are only a few of the acute and vital matters to which the report of this committee may advert whatever this notable group may say on these matters should be a contribution to the literature of the subject.*"

determined and controlled. Here are practical issues which in several states are being agitated with a good deal of vigor, among lawyers and public officials dealing with public utility regulation.

The chairman of the Virginia Corporation Commission and members of the Colorado and Illinois commissions, along with counsel for the city of Chicago in telephone litigation, are members of this committee, which is headed by Carl D. Jackson, secretary and former chairman of the section and former chairman of the Wisconsin Railroad Commission. The personnel of this committee follows:

CARL D. JACKSON, chairman; Bar Building, 36 West 44th Street, New York City.
WORTH ALLEN, member, Colorado Public Utility Commision, Denver, Colorado.
EDWARD A. ARMSTRONG, Princeton, New Jersey.
FREDERIC L. BALLARD, Land Title Building, Philadelphia, Pennsylvania.
JAMES L. BOONE, Boise, Idaho.
EX-JUDGE CHARLES S. BRADSHAW, Bradshaw, Schenk, and Fowler, Crocker Building, Des Moines, Iowa.
REUBEN B. CRISPELL, Sullivan and Cromwell, 48 Wall Street, New York City.
FRANCIS L. DAILY, Cooke, Sullivan and Ricks, Chicago, Illinois.
GEORGE E. DARGAN, Dargan and Paulling, Darlington, South Carolina.
ROBERT M. DAVIS, School of Law, University of Kansas, Lawrence, Kansas.
DOZIER A. DE VANE, 725 13th Street N. W., Washington, District of Columbia.
FREDERICK G. DORETY, Great Northern Railway Company, St. Paul, Minnesota.
CHARLES H. ENGLISH, Erie Trust Building, Erie, Pennsylvania.
WM. MEADE FLETCHER, chairman, Virginia Corporation Commission, Richmond, Virginia.
CHAUNCEY B. GARVER, Shearman and Sterling, 55 Wall Street, New York City.
G. GALE GILBERT, member, Illinois Commerce Commission, Springfield, Illinois.
FRANKLIN T. GRIFFITH, Electric Building, Portland, Oregon.
GEORGE I. HAIGHT, Haight, Adcock and Banning, The Rookery, Chicago, Illinois.
THOMAS FRANCIS HOWE, 33 North La Salle Street, Chicago, Illinois.
ROBERT H. JACKSON, Jackson, Durkin and Leet, Jamestown, New York.
OSWALD L. JOHNSTON, Simpson, Thacher and Bartlett, 120 Broadway, New York City.
LOUIS A. LECHER, Trust Company Building, Milwaukee, Wisconsin.
RALPH NORTON, 165 Broadway, New York City.
JAMES PIPER, Piper, Carey and Hall, Calvert Building, Baltimore, Maryland.
WATSON B. ROBINSON, Frueauff, Robinson and Sloan, 67 Wall Street, New York City.
CHARLES T. RUSSELL, 140 West Street, New York City.
RICHARD B. SCANDRETT, JR., Swiger, Scandrett, Chambers and Landon, 60 East 42nd Street, New York City.
MILTON SMITH, JR., Telephone Building, Denver, Colorado.
DAVID F. TABER, Isham, Lincoln and Beale, 72 West Adams Street, Chicago, Illinois.
FREDERICK H. WOOD, Cravath, De Gersdorff, Swaine and Wood, 15 Broad Street, New York City.

THE first committee created by the present council of the section is a standing committee made up as follows:

JOHN F. MACLANE, chairman; Simpson, Thacher and Bartlett, 120 Broadway, New York City.
DAVID E. LILIENTHAL, secretary; member Wisconsin Railroad Commission, Madison, Wisconsin.
JAMES A. BAKER, Baker, Botts, Parker and Garwood, Houston, Texas.
KENNETH F. BURGESS, Cutting, Moore and Sidley, Chicago, Illinois.
ROBERT G. DODGE, Storey, Thorndike, Palmer and Dodge, Boston, Massachusetts.
HARRY J. DUNBAUGH, Isham, Lincoln and Beale, Chicago, Illinois.
NATHANIEL T. GUERNSEY, Platt, Taylor and Walker, New York City.

GEORGE ROBERTS, Winthrop, Stimson, Putnam and Roberts, 32 Liberty Street, New York City.
BRUCE W. SANBORN, Sanborn, Graves and Andre, St. Paul, Minnesota.

The resolution unanimously adopted by the section made it the province of this standing committee;

> "to prepare and present to the council and the section, at each annual meeting, a report reviewing developments during the preceding year in the field of public utility law, including important decisions of courts and commissions, and notable changes in statute law, both Federal and state."

Such an annual survey and report by this group of outstanding lawyers is likely to prove of considerable interest and assistance to all who have to do with public utility law.

IN the creation of these notable committees and the organization of their work, there has been and could be no thought of furthering any particular views on any subject. The diversified membership of the committees, as well as of the section itself, would preclude that. It remains to say that, in my judgment, he would be a rash individual who would endeavor to forecast with accuracy the views of a majority of the members of any of these committees upon any vital phase of its topic. That all of the members of any committee will agree upon any acutely controversial issue seems to me unlikely and in no way important. It seems far more important that the section, in all its committee work as well as its own deliberations, shall develop and extend a tradition of open-minded approach and of clear and unbiased analysis, to the end that its reports shall be genuinely a contribution to an informed professional opinion concerning vital phases of the law. The section seeks and welcomes the broadest possible interest and participation of members of the profession in its activities.

What the Utilities Are Doing Abroad

SWITZERLAND has just completed an electric locomotive, 110 feet long and 245 tons in weight, designed to be the most powerful in the world.

* *

A MONOPOLY of motor truck freight transportation in Germany has been granted to a single private company, in order to overcome the competition existing in long hauls.

* *

RESIDENTS *of twenty Cuban cities recently resorted to the use of* candles and oil lamps in an effort to force the local power utilities to reduce their rates to 10 cents a kilowatt hour.

* *

PAUL HOFFMAN, a German, has produced a dynamo that apparently generates 125 per cent of the electric power required to operate it—and none of the sceptics have so far been able to explain the phenomenon.

* *

THE *"Spectrum Special,"* a train composed of coaches each of a different color, is the latest transportation novelty developed in England. When it is learned which tint the public prefers, all coaches will be given that color.

* *

THE world's speed record for railroad travel is now held by a propellor driven coach called a "Zeppelin on wheels," which made the distance of 168.4 miles from Hamburg to Berlin at an average speed of 103 miles an hour.

As Seen from the Side-lines

WOMEN are clumsy in politics. They have an experience of less than twenty years to draw upon, while man has centuries behind him.

* *

MRS. KNAPP, of New York, for example, was practising a form of nepotism quite common to American government. She made the mistake of cluttering her own pay roll with her own relatives.

* *

THE males, in the light of their extended training, rely upon indirection. You put my brother on your pay roll and I'll put your sister on mine. Also, men are more clubby. They hesitate to expose each other. Politics is largely a game of tit for tat. For the tit you deliver upon the head of your partisan opponent today, a tat may penetrate your own pregnable armor tomorrow.

* *

IF this fraternalism and self-caution did not exist, the arrant nepotism practised by members of Congress, who have their own wives upon the pay roll, would be exposed and their superior righteousness would be dissembled.

* *

IT may be recalled that the Federal Trade Commission sensationally revealed that the Federation of Women's Clubs was being used to disseminate propaganda for the so-called Power Trust.

* *

WELL, the women seem to be at it again. The anniversary of George Washington, no less, is the vehicle employed to distribute a comparison between Mr. Hoover and Mr. Washington, in which the former does not suffer by the comparison. Whatever may have been the intention and purpose of the good women, a presidential campaign is in the offing and they are accused of resorting to a political practice which may have been helpful to Mr. Hoover but was bound to stir dissension in an organization which has an active membership in Democratic as well as Republican strongholds.

* *

WE are said to be wise only to the extent that we profit from experience. Yet here is an organization of fine and redoubtable women caught twice in two years in political performances of a kindred nature.

* *

THE men had a similar experience. A national magazine obviously friendly to the administration was preparing to publish an open advertisement addressed to Mr. Hoover and congratulatory of his administration and to be signed by a hundred of leading economists, philosophers, and moralists generally, when it came to the attention of Pat Harrison, who mentioned it in the Senate. These men, with long experience back of them, immediately abandoned the program and it is now forgotten and will be, unless Mr. Harrison finds some excuse satisfactory to himself to interject it into the coming campaign.

* *

CAUTIOUS male politicians rarely write what they can say of a private character which they do not want revealed, and they rarely say it in the presence of more than one person. There are still men in the Senate who timidly recall the Foraker letters. Only a Roosevelt (meaning T. R., of course) could have laughed off his "We are both practical men" letter to the elder Morgan.

* *

BUT when it comes to the recording of a record that they may call to their future service, the men are both verbose and loquacious. Take, for this illustration, Mr. Franklin Roosevelt's

correspondence with Mr. Hoover on the St. Lawrence power project.

* *

MR. ROOSEVELT is a candidate for the Democratic nomination for President of the United States. If he receives that nomination and if Mr. Hoover receives the Republican nomination, which Mr. Hoover will receive, the former can be expected to attempt to crystallize power into one of the dominant issues of the resultant campaign. He will no doubt bring forth evidence that Mr. Hoover is supported by the bulk of the utility interests because there is no secret to that fact at all. It is a logical consequence of Mr. Alfred E. Smith's attitude on power, of Mr. Franklin D. Roosevelt's attitude on power, and of Mr. Herbert Hoover's attitude on power.

* *

MR. ROOSEVELT can not expect to receive that substantial support and his logical course will be to destroy or impair the value of that support to Mr. Hoover.

* *

ST. LAWRENCE waterways and power developments constitute a problem involving not alone the United States but the United States and Canada. They must be approached and effected through negotiations and compromises between two friendly nations. The state of New York has peculiar rights to be protected in the matter, and Mr. Roosevelt, in demanding equivalent protection for New York, of which he is governor, set himself up as an exponent of the rights of the United States as a whole.

"ARE there any secret negotiations pending between the United States and Canada? If so, the state of New York demands to be informed in order that the rights of the American public may be amply secured." That is the gist, if not the exact language, of his letter to the President. He gives his letter to the press for publication. The public is allowed to draw any insinuating conclusion it may desire from the fact that Mr. Hoover did not respond to him.

IT is not the purpose of this column to compute the merits of the St. Lawrence project, or to infer that many valuable years have been lost while the river has run to waste, but to observe the political trends and to draw some reasonable conclusions from them.

* *

MR. ROOSEVELT, if he is to be successful in his quest for further political honors, must impress the country that he is not an integral part of that political machine called Tammany and that he is not an integral part of that political-financial machine known to the country as Wall Street.

* *

DELEGATES in the convention and votes in the canvass must be obtained from the west. The average western farmer, whether he has been overtaken by the sheriff or is only one step ahead of him, blames Wall Street and the east for railroad, financial, and agricultural troubles which beset him, not to mention the drought of last year. As between a representative of official Washington running on one ticket and an official representative of "the East" running on the other, he probably would stay at home on election day, unless the whirl of political emergencies provided him with a modern Populist or some other temporary third party for which to register his spleen.

* *

IF Mr. Roosevelt can set himself up in the popular estimation as a crusader for independent rights and as an antagonist of over-consolidated wealth and authority of the east, he probably would regard it as a good day's work. He seems to have begun his campaign with a larger knowledge of political conditions throughout the country as a whole than did his Democratic predecessor, whose campaign for the presidency never did get going after the day he said all he knew about the agricultural condition was that the McNary-Hagen Bill was no good.

John T. Lambert

What Others Think

Was the Alabama Investigation a "Whitewashing" Expedition?

In this department of the last issue of PUBLIC UTILITIES FORTNIGHTLY was given a brief description of the report of the special joint committee commissioned by the Alabama legislature to investigate the regulation and taxation of power companies in that state. Since then the minority report by the sole dissenting committeeman, Representative Richard Kelly of Talladega county, has been made public. Since then, also, various liberal writers have referred to the Alabama investigation as a "whitewashing expedition" rather than a *bona fide* attempt to probe the real state of affairs concerning Alabama electric utilities. The insinuation of these writers would appear to be that the Alabama investigation was a "put-up job" from start to finish—artificially instigated by those who were not unkindly disposed towards the utilities in order to ward off any subsequent inquiry by less sympathetic investigators.

These two matters—the dissenting report of Representative Kelly and the "whitewash" charges—are strangely at variance. It must be borne in mind that Representative Kelly was the instigator of the Alabama investigation and the resolution introduced by him to accomplish that end was passed under the name of the "Kelly Resolution." Mr. Kelly's minority report plainly shows that he certainly was not favorably disposed toward Alabama electric utilities and that he is still unfavorably disposed toward them, and further, that if the investigation turned out to be a complete whitewashing of Alabama utilities and the Alabama Public Service Commission, it certainly was not the fault of Mr. Kelly.

The Kelly report is very brief and somewhat noncommittal. He does not differ radically from the majority report and makes only one specific suggestion; that the tax of the Alabama Power Company ought to be increased, although he does not say that the company now is paying less taxes than other corporations similarly situated. He says that the electric utilities' property values ought to be continually and closely supervised both for taxation and regulatory purposes—a proposition with which few will disagree. He charges the utilities with controlling the press by placing advertising only with "friendly newspapers," and believes this should be prevented by legislation, but he does not venture an opinion as to how a law to prohibit a corporation from advertising in whatever newspapers it pleases could ever pass constitutional muster.

Mr. Kelly claims that all precedent was violated when the committee did not select the author of the resolution responsible for its existence for its chairman. News comes from Alabama that Mr. Kelly and other young members of the Alabama legislature made violent attacks in the public press upon the Alabama utilities prior to the organization of the committee. Therefore, lack of open-mindedness was the reason assigned for the failure of the committee to elect Mr. Kelly to chairmanship.

Mr. Thomas Woodlock, writing in *The Wall Street Journal*, began his analysis of the Alabama report as follows:

"Reference in what follows will be confined to findings of fact, omitting state-

ments of opinion, beyond recording the fact that the majority of the committee commended the public service commission for the services that it furnished to the public—also the tax commission. This being so, the report is stigmatized in the usual quarters as a 'whitewash' which is only natural!"

It is not unusual for a favorable report of an investigation committee to be stigmatized as a whitewash, by those who are disappointed in the outcome.

What else can one say, unless he is ready to admit that as the result of the investigation he was shown to be mistaken. Most persons hate to do that. That is why the term "whitewash" is so often used.

—D. L.

MINORITY REPORT OF LEGISLATIVE INVESTIGATING COMMITTEE ON PUBLIC UTILITIES IN ALABAMA. July 25, 1931.

MUNICIPAL POWER. By Thomas F. Woodlock. *The Wall Street Journal.* August 3, 1931.

The Coal Operators Ask for Regulation on a Public Utility Status

WHEN the idea of actively regulating the utility business was first introduced in this country there were many utility operators who fought against it vigorously. They could see in it nothing but the thin edge of a wedge of Socialism.

Today it appears that regulation is being regarded by public utility operators, as well as the operators of businesses not yet so classified, as a soothing syrup for the aches and pains that trouble an industry that is exposed to free and open competition. To paraphrase a national advertising slogan, "industries cry for it."

The latest industry to cry for regulation is the coal-mining industry. At recent conferences between Secretary of Labor Doak and Secretary of Commerce Lamont and leading bituminous operators, the producers themselves suggested that the waste and low prices resulting from the duplication of facilities and the unrestricted output of competing mines might be controlled for the benefit of the industry, the coal mines, and ultimately the public, if the government should regulate coal mining as a public utility.

It is particularly noteworthy that this suggestion comes from the mine owners themselves. It is doubtful whether regulation of mining as a utility could ever be attained in any other way except by voluntary submission of the industry to regulation.

BACK in 1920 the state of Kansas passed a law purporting to regulate as utilities among other businesses the meat packing industry and the mining industry. This regulation included the fixing of employees' wages. A Kansas tribunal, by virtue of this law, attempted to regulate the wages of employees of a certain packing company, and when the case went to the Supreme Court of the United States the law was declared unconstitutional so far as it affected the regulation of wages of packing house employees (Wolff Packing Co. *v.* Court of Industrial Relations, P.U.R.1923D, 746). Of course, this decision is not at all a binding precedent upon the proposition of that phase of the Kansas law regarding mining, but the language of the late Chief Justice Taft, rendering the opinion of the court, has so plainly indicated the attitude of the court toward the law in its entirety that it has never been enforced.

The Taft opinion stated:

"It has never been supposed, since the adoption of the Constitution, that the business of the butcher, or the baker, the tailor, the wood chopper, the mining operator, or the miner was clothed with such a public interest that the price of his product or his wages could be fixed by state regulation.

It is true that in the days of the early common law an omnipotent Parliament did regulate prices and wages as it chose, and occasionally a colonial legislature sought to exercise the same power; but nowadays one does not devote one's property or business to the public use or clothe it with a public interest merely because one makes commodities for, and sells to, the public in the common callings of which those above mentioned are instances."

WITH this in mind it will be seen that any move towards placing the coal mines under utility regulation would have to come from the operators themselves. It is not likely that it could ever be forced upon them under the prevailing state of the law.

This interesting development in the mining industry escaped much editorial notice, although most eastern newspapers carried a fairly prominent news story of the Washington conferences—a story brought out first by the Pittsburgh *Sun-Telegraph*. The story announced frankly that the trouble with coal mining right now is nothing more or less than over-production. The story stated in part as follows:

"If the operators should attempt through a voluntary agreement to curtail production and thus raise the price of coal they would be violating the Sherman Anti-Trust Law.

"If Governor Pinchot and the governors of West Virginia and Ohio were to take charge of the mines and regulate production as Governor Murray had done in Oklahoma with the oil wells, the price of coal would at once advance. And who knows but that it would start a wave of prosperity that would reach into all branches of business?"

A story in the Washington *Herald* (Hearst) quotes the coal men's spokesman as follows:

"Two or three years ago if anyone had proposed government regulation to the operators it would have thrown them into a rage and they would have denounced it as Bolshevism.

"Now they are inclined to welcome it as the only way out.

"They see nothing ahead of them, as things stand now, but the loss of their properties through their inability to sell coal at a profit."

PROBABLY the most interesting of the few editorials on the subject was published in the Scripps-Howard papers. It stated in part:

"Is the political battle cry 'No government in business,' which resounded so loudly when our industries were riding the crest of prosperity, becoming obsolete?

"Some of the 'rugged individualists' who complained loudest against anything savoring of government regulation of business to protect the consumers and the workers are now appealing to the government to help them out of their difficulties, brought on by depression, greed, and bad management.

"The latest to turn to an already harassed government is the bituminous coal industry, according to credible reports from Pittsburgh. Some of the biggest coal operators in the world now are ready to confess that the industry is not able to manage its own affairs, and to solicit government regulation of the mines as a public utility. A few years ago such a suggestion would have been the rankest sort of heresy.

"The coal industry is demoralized, and conditions have been getting worse rather than better. Cut-throat competition, anti-labor policies, over-production, use of coal substitutes, and other factors have combined to wipe out dividends and throw an army of miners out of work. Conditions among miners, who have been denied civil liberties and reduced to a starvation level, are a national disgrace and menace.

"It has seemed probable for some time that government intervention of some sort finally would be necessary to end this chaos in a basic and essential industry. We must have coal, and after all men idle through no fault of their own cannot be permitted to starve. . . .

"As for the government's taking over the coal mines, this would involve the purchases of coal lands, and the operation of such mines as are needed, as some operators now suggest. This may eventually become necessary as a last resort. But if the coal barons think that, having made a failure of the business, they can dump the mess on the government's doorstep and walk off with the public's dollars jingling in their pockets, they are mistaken.

"Having been permitted to exploit a natural resource without hindrance for generations, and having brought the industry to ruin, they cannot now wash their hands of their troubles by saying to Uncle Sam, 'You do it after paying me off.' They have a very definite public responsibility which they must shoulder in fairness to the public and to other industries, such as lumber and oil, which are seeking and have as much cause to seek, the help of the government."

If the Scripps-Howard editors see the action of the coal men in voluntarily seeking regulation as an unusual reversal of attitude, faithful readers of the Scripps-Howard papers will possibly see the editorial itself as an indication of a change of attitude equally unusual, inasmuch as the editors appear to be definitely opposed to government ownership. This same chain has heretofore appeared to be favorably disposed editorially towards governmental operation of public utilities, especially government operation of the power industry.

Perhaps the editors feel that the government should not take over any business during a time when it is not making money.

—F. X. W.

SOFT COAL MEN SEEK FEDERAL CONTROL. *New York Times.* August 7, 1931.

OPERATORS PROPOSE U. S. REGULATION OF COAL INDUSTRY. *Washington Herald.* August 7, 1931.

GOVERNMENT MINES? Editorial. *Washington (D. C.) Daily News.* August 8, 1931.

State Regulatory Bodies Chase Unwieldy Trucks from the Highways

MOTORISTS who have become annoyed and alarmed at the increasing number of four and five-trailer motor trucks that lumber along the main national highways will be pleased to learn that the Ohio Public Utilities Commission has discovered a way to eliminate, or at least to control, what otherwise promises to be a first-class nuisance. Recently it refused to grant the applications of two interstate motor truck lines for certificates of convenience and necessity to operate over part of the through road between Cleveland and Chicago; in doing so the commission announced its adoption of a new policy. The commission's survey of the Cleveland-Chicago route, according to a statement issued by it,

> "shows an average of 22.6 trucks, tractors, trailers, and semi-trailers passing over this highway per hour, or an average of one every three minutes, with an average tonnage of 85.94 per hour."

According to the commission this route has reached a "maximum usage of saturation.". It declared that it would make a study of highways and that, wherever a similar saturation is disclosed, the commission

> "must insist upon a most convincing showing of public necessity before even considering an application for a certificate which would duplicate the hazard to life and property here found. The denial of the application is based entirely upon danger to the traveling public and injury to the highways, since the commission is not legally empowered to pass upon the question of convenience and necessity for interstate transportation by motor truck. None the less, the commission is impressed with the growing feeling that the state highways are overburdened by commercial busses and trucks."

THE New York *Times* reports, through an editorial, another experiment undertaken by the Pennsylvania commissioner of motor vehicles to keep excessively long motor trucks from the Keystone highways. The editorial is in part as follows:

> "Until two portions of matter can occupy the same portion of space at the same time, the automobile world will continue to be monstrously crowded. It is worth recording that two states have just taken measures to reduce by a little the surplus of motor trucks. Pennsylvania begins by forbidding 'the promiscuous operation' of vehicles more than thirty-five feet long, and of motor 'trains,' those fearful and wonderful two and three vehicle processions more than seventy feet long. The limit set is certainly modest. Even restricted to threescore feet and ten, these lumberers and cumberers of the road will not be loved by other users. The Pennsylvania Commissioner of Motor Vehicles means business. He has served notice on all the other states and on the District of Columbia. The state highway patrol will be on guard

at every road by which the hostile forces can enter the state. Every truck and truck-train of illegal longitude will be turned back and the drivers bidden to get out and keep out. 'We don't intend,' says the commissioner, 'to allow the people of this state to be pushed off the highways they have built with their own money.'"

—M. M.

SHOOING AWAY MOTOR TRUCKS. Editorial. *New York Times.* August 13, 1931.

How Government Operation of Industry in Russia Affects the Individual

COLONEL Clarence T. Starr, who spent three years as a construction engineer in Russia, is presenting an interesting series of articles on conditions in that country in the *Nation's Business;* the second instalment appears in the August issue, and presents the author's opinion concerning the effect of governmental operation of industry on personal initiative.

Colonel Starr finds that Soviet Russian business works under a mass of plans, systems, formulas, codes, and quotas, all dominated, of course, by the Five Year Plan. This adherence to formulas, in addition to irritating the practical minded American, is costly. Russia has largely the accepted German practice and her formulas are built on German foundations. As an illustration, Colonel Starr points out that Germans enclose electrical transformers in buildings. It was extremely difficult to persuade Russian authorities to adopt the American practice of open-air transformer stations, even though this would save as much as several hundred thousand dollars in building structure for a single station.

The Soviet mind longs for a rule for everything and such a rule, once adopted, becomes ironclad, dampening individual initiative for experiment or innovation. Whether it is a railroad or a banana stand, business in Soviet Russia is carried on by approved rules. To depart from these rules is to court personal misfortune, however plausible such departure may seem to the individual. Here is an example cited by Colonel Starr:

"One young Russian engineer came to me one day and asked:

"'How much sand per day will be used by a certain type of engine pulling so much weight up such and such a grade?'

"I had been in Russia long enough to know there was something behind the query, so before beginning the guessing contest I questioned my interrogator and discovered that he had worked out a formula. After looking it over I asked him:

"'Have you figured out what wet rails do to your figures?'

"No, he hadn't nor what a flat wheel or any of several other unknown factors might do. He wasn't discouraged but went right ahead and got his formula accepted as a standard. If a 'lokey' stalls because the engineer didn't take into account several different factors, the engineman is out of luck. First, he doesn't get any more sand that day without several conferences. Second, if he didn't take the theoretically correct amount, he will probably lose his job or be suspected of sabotage. If, however, he did take the correct amount he is absolved from all blame. So is the author of the formula since the technical council approved it."

BEFORE setting down these defects in the Soviet system as inherent faults in the governmental operation of industry, we must remember, of course, that Russia, previously without precedent or technical experience, has made a mightly long leap in economic development. In her place it is but natural that she should stress standardization and grasp for rules, codes, and formulas in order to get industrial production on some sort of a foundation. Upon the question whether in future years she will relent in her suppression of individual experiment depends the verdict as to whether or not governmental operation of industry of itself causes an inevitable paralysis of personal initiative.

A DEAD HAND HOLDS RUSSIA BACK. By Colonel Clarence T. Starr. *Nation's Business.* August, 1931.

Devices Used by Municipalities to Evade Debt Limitation on Acquiring Utility Plants

ONE of the reasons why municipalities do not go suddenly into the electric power and light business or any other sort of electric business whenever the spirit so moves, is the limitation placed by law upon the debt-contracting ability of the municipality. In some states, this limitation is imposed by the Constitution and in some states by statute. In a few states, (such as Colorado), certain cities have "home rule" and can do pretty much as they please about contracting debts.

Debt limitation is often in the form of a prohibition against municipalities contracting debts in excess of a certain amount without a special election at which the voters must decide whether they are willing to assume, through increased tax assessment, the burden of financing the proposed municipal utility plant, because municipal plants, like privately owned plants, require money in the process of construction and establishment. When the issue is put up to the voters in this way, it often acts as a damper on the ardent spirit of municipal ownership, as voters have an invariable aversion to voting "yes" on a proposition that means more taxes.

Accordingly there has grown up throughout the states various devices employed by municipal officials who favor municipal ownership, to attain that end without running the gauntlet of the polls. Professor Lawrence L. Durisch of Nebraska University, in the September issue of *National Municipal Review* has written an interesting article in which he undertakes to describe the growth, use, and comparative success and legality of these various devices.

OLDEST of all, is the method of taking governmentally owned utilities out of the scope of constitutional debt restriction by having a sympathetic legislature create "utility districts" which are new and separate municipal corporations, superimposed upon the territory of the city to be served and formed for no other reason than to own and operate a utility plant.

This method has been only fairly successful. It cannot be used in an emergency, frequently requires referendum, and cannot be done at all in some states under the prevailing Constitutions.

More recently, many cities have tried unsuccessfully a plan of using a lease plus an option to purchase as a means of acquiring utility property in excess of their debt limitation. Courts have usually set these devices aside as mere evasions of lawful debt restrictions.

Professor Durisch reviews other devices but the most interesting and at present the most popular seems to be the "conditional sale plan." Under this plan it is necessary to secure the coöperation of the manufacturer who sells the plant. It is sold on a conditional sales contract, the title remaining in the seller's name until the whole amount is paid; the instalments, however, are paid from current revenues. In this way, it may be said that the municipality has never bought a plant until, after paying for itself through successive instalments, it automatically becomes the property of the municipality without any formal outlay of taxpayer's funds.

The courts have not been unanimous in their views on this plan, but to date it seems the most successful.

—M. M.

MUNICIPAL DEBT LIMITS. By L. L. Durisch. *National Municipal Review.* August, 1931.

¶ "THE *term private ownership is a misnomer when applied to such a condition as that which exists in the electric light and power industry today. It is as absurd to regard it as capitalism, in the historic and accepted sense of that term, as it would be to so regard the English coöperative societies. We need a new nomenclature.*"—JOHN SPARGO

Are the Courts and Commissions Regulatory Rivals?

MARY Louise Ramsay, who seems to be establishing a reputation for legal research in the field of public utility economics, has started an interesting series of articles upon the relationship of the courts to commission regulation of public service in the August issue of *The Journal of Land & Public Utility Economics.* Miss Ramsay has so far been painstaking and her August instalment does not complete even the study of one state—Massachusetts. It is to be hoped, however, that her studies will continue until all or practically all of the states have passed under her analysis, for there is much need of just such a regulatory inventory.

There is a current charge that commission regulation has been ineffective. There is a more specific charge that this ineffectiveness has been due to reversal of commission decisions by courts—particularly by Federal courts. Without at all conceding the soundness of the first proposition—(that regulation has been a flat failure)—it will be seen that a thorough study of the reported decisions is the only way to prove or disprove the accusation that the courts are interfering with regulation.

IT was inevitable that there should be some friction between courts and commissions. As Miss Ramsay puts it:

> "Inevitably, the mixture of *quasi* judicial, *quasi* legislative and purely ministerial powers and functions has aroused dissension, especially since commission authority, created by legislatures, has extended into realms formerly the sole province of constitutionally created courts, while such courts have the last word by way of review. Working out a *modus operandi* between the two sometimes rival agencies of government has not been an easy task."

The Ramsay article sets out to find the answer to the following three pertinent questions:

(1) In what fields of regulation has the court been drawn in?

(2) Has the Massachusetts court interpreted the commission's powers strictly or broadly? This is, has the court aided or hindered the commission in the performance of its duties?

(3) Have the court's rulings materially affected the scope and quality of regulation in Massachusetts?

SPACE here allows but a brief summary of Miss Ramsay's detailed findings. It appears that the Massachusetts regulatory tribunals have had their orders reviewed in 41 cases in the state supreme judicial court. Location of utility service was the issue involved in 15 of these cases: the commission was reversed once and sustained 14 times! Ten of the cases involved rates and for these the final score stands 7 to 3 in favor of the commission. Four cases involved power over service and in these the commission broke even 2 to 2. There were three miscellaneous cases involving technical procedure and statutory interpretation.

The balance of the cases involving such matters as security issues and valuation will, presumably, be covered in subsequent instalments.

—M. M.

COURTS AND COMMISSION RELATIONS IN MASSACHUSETTS. By Mary Louise Ramsay. *Journal of Land & Public Utility Economics.* Chicago, Ill. August, 1931.

¶ "IN *1929 state and municipal works were in control of 53 per cent of the water power, and private industry of only 47 per cent. The result is that electric light and power are dearer in Germany than elsewhere, and that, since they are monopolies, the provision of light and power is used by many communities as an additional form of taxation. This happens also in connection with municipally operated street railways and with water and gas works . . . In recent years there has been an increasing tendency in Germany to raise the rates for gas, water, and electricity.*"

HJALMAR SCHACHT
Former president of the German Reichsbank

A Shooting Affray Leads to the Exposure of a Free Pass Racket

THE recent mishap to a New Jersey state senator who was critically wounded under malodorous circumstances in the apartment of a young woman has led to an investigation of the "free pass racket" as practiced on railroads by state officials. The revelations promise to have repercussions in other states than that of New Jersey.

It appears that among other privileges granted to the young woman by the senator, was a free railroad pass. An investigation at Trenton followed. It was learned that the practice of issuing passes was begun many years ago when the railroads received valuable concessions from the state, and may have been justified by the conditions at that time. But the free list increased from 300 to more than 1,000, while traffic in the use of the passes became notorious. About 700 passes on the list were assigned to nominal legislative clerkship and, as the Newark *Evening News* called them, "other fake jobs." The *News* editorially stated:

> "The railroads feel they cannot oppose the abuse of the pass system. They fear political reprisals. But, there are men in the New Jersey legislature who are above being party to such cheapness; they must have a higher conception of government than to be party to the padding of legislative clerkships merely to get free rides for favored persons. Who among them will stand up to make the fight that should be made to cleanse this situation?"

COMMENTING on the broader aspects of the investigation the New York *Times* stated editorially:

> "Years ago Federal legislation put an end to the abuse of interstate railroad passes, limiting their issue to employees of the railroad and their families, officers of the companies, disabled soldiers, caretakers of live stock, railway mail service employees, and certain others engaged in charitable work. But Congress could not deal with the abuse within the states."

State public service commissions have always gone as far as they could to denounce free pass abuses, but unfortunately as in New Jersey, their hands have been tied by legislative acts or bargaining contracts between the state or municipalities and the utilities affected. The free pass abuse has not always been restricted to railroads. Street railways everywhere are often obliged by ordinance to carry free of charge, policemen, firemen, and other public officials on duty. Free telephone and gas service to municipalities and municipal officials have been exacted by some municipalities in return for franchise rights. Some of these more petty abuses have been stamped out by the state commissions but the state railroad pass racket probably survives all too widely.

—M. M.

Newark Evening News. August 20, 1931.

New York Times. August 20, 1931.

Other Articles Worth Reading

RAIL RIVALRY. By Thomas F. Woodlock. *The Wall Street Journal.* July 27, 1931.

ST. LAWRENCE DEVELOPMENT FACES MANY IMPEDIMENTS. By S. Burton Heath. *Electrical World.* July 25, 1931.

TELEPHONE REGULATION FROM THE COMMISSION VIEWPOINT. Editorial. *Telephony;* July 18, 1931.

THE FUTURE OF THE RAILROADS. *Bankers' Magazine.* June, 1931.

THE OUTLOOK FOR RAILROAD NET INCOME. By W. L. Crum. *Barron's;* July 20, 1931.

THE POWER ISSUE IN POLITICS. By Langdon Post. *Outlook and Independent;* July 15, 1931.

UNFAIR RETURN. By Thomas F. Woodlock. *The Wall Street Journal;* July 16, 1931.

UTILITIES GET PROMINENT PLACE ON THE POLITICAL CALENDAR. *The Business Week;* July 15, 1931.

The March of Events

California

Franchises for Bus Operators Opposed

THE board of public utilities and transportation of Los Angeles, according to the Los Angeles *Times*, has forwarded to the city council a report opposing a proposed amendment to the city's charter which would place bus lines under franchise the same as railways. The board expresses the opinion that the busses are serving the public interest better under the present permit system.

Quoting from an account of the proposals contained in the *Times:*

"The report points out that the association [a women's organization] presents no argument for placing bus lines under franchise regulations except assertions of inadequate service in the district, that such lines cannot provide for mass transportation like the street railways and that under the present system, where they act as feeders to railways, bus lines may be interested in operating in territory where they would not bid on a franchise."

District of Columbia

Commission Investigates Corporate Relationships of Gas Utility

EVIDENCE that the Washington Gas Light Company intended to turn over to the Central Public Service Corporation, a related company, $26,020 representing a credit to the Washington Company as the result of the failure of the Maryland Gas Transmission Company to furnish natural gas, was made the basis on August 13th of an order by the commission restraining the company from paying over this sum, and from transferring ownership or control of a transmission main to the Central Public Service Company, a Chicago concern. Special Assistant Corporation Counsel William A. Roberts had presented evidence that the Washington Gas Transmission Company was being formed to take over this pipe line for the Central Public Service without payment to the local company.

Evidence also was obtained which, according to commission officials, tends to show that the local company is paying 4 cents per thousand cubic feet more for its natural gas than goes to the Columbia Gas and Electric Company, which supplies it. This 4 cents difference, it is said, goes to the Chicago corporation.

The action by the commission followed an investigation into the affairs of the local company by government officials as the basis for a prosecution for alleged violation of the La Follette Anti-merger Act. The gas company passed into the hands of a banking group about three years ago when the Seaboard Investment Trust was formed. Later the trust became the Washington and Suburban Company. Recent investigations, it is said, indicate that the stock in the Washington and Suburban Company had passed to the Westfield Trust of Illinois. A. E. Pierce, president of the Central Public Service Company, is also the head of the Westfield Trust. The Central Public Service Company, some months ago, announced that it had taken over the management control of the local company.

Officials and attorneys for the Washington Gas Light Company and the Central Public Service argued on August 21st that the order restraining the company was illegal, but the commission refused to rescind its order.

A statement has been made by Mr. Pierce in which he denies that his ownership of the beneficial interest in the Westfield Trust, in which ultimate control of the stock of the Washington Gas Light Company lies, violates any laws.

He explained that the Central Public Service Corporation had originally planned to build a pipe line system to transport natural gas from fields in Kentucky and West Virginia to points in Virginia, Maryland, the District of Columbia, and Indiana, and to supply gas to distributing systems controlled by it as well as to various distributing companies along the line and to the Washington

Gas Light Company, which serves in the Capital City.

He stated that it developed that the Columbia Gas and Electric Company had a considerably more extensive project under consideration which would serve all of the territory and the Central Corporation decided to obtain its supply from the Columbia Gas and Electric system on advantageous terms. He said that, under these arrangements, a supply was obtained for Washington, which was thereby saved from making important capital expenditures. He said that the difference in price did not constitute an increase of 4 cents per thousand cubic feet, but less than 1 cent per thousand cubic feet of gas delivered. The penalty payment, according to Mr. Pierce, was turned over to the Central Corporation and had been credited against the cost of the transmission line built in the District for the Washington Gas Light Company.

Florida

Power Tax Fight Is Put Up to Consumers

A PROPOSED ordinance which would levy a tax of 2 cents per kilowatt hour on the Florida Power & Light Company in Palatka, according to the Palatka *News*, will not be fought by the company as the company holds the view that the battle properly belongs to the consumer "who will pay the freight."

The company, it is said, operates under a franchise which makes no reference to the rates to be charged domestic consumers, although it specifies a 9-cent rate for current for commercial use and also sets out the rate for power. The company has stated that it would put the 9-cent rate for commercial lighting into effect whenever the city commission demands, but that it will recover the revenue thus lost by raising the rate for domestic lighting.

In regard to the use of gas, the company is said to be willing to put the franchise rate of $1.60 into effect, replacing the present rate of $2, but when it does so, it will reduce the present efficiency of the gas, which is given as 580 B.T.U., to 400 B.T.U. and the consumer will be none the better. He will get a cheaper rate but will be compelled to use more gas of an inferior quality and his bill at the end of the month will be the same.

The proposed power tax would create a considerable burden for lighting consumers. The *Daily News* itself is said to be the largest user of this quality of current, and the city tax would increase its light bill by $26 per month. There has also been some opinion that the proposed tax would be illegal.

Georgia

City's Valuation of Gas Company Is Completed

PROPERTIES of the Atlanta Gas Light Company have been appraised at $6,660,731 by Dr. John Bauer, of the American Public Utilities Bureau, who has been valuing the properties for the city of Atlanta in its fight against the utility's plea for higher rates. The company's appraisal was $10,940,819. The commission had arrived at a value of $10,261,819. Dr. Bauer in his report asserted that the former appraisals had ignored the sharp recession in price levels for the past few years and the present conditions as to prices and costs.

The largest discrepancy between the appraisals is in the valuation of mains. They are listed in the company valuation at $1.50 a linear foot. Dr. Bauer cites that cost of the 6-inch mains is 50 cents a foot, leaving a difference of $1, which he contends could not possibly be incurred for expenses of laying the pipe. He also placed meter values at $9, while the company report charges $18.

A special committee representing consumers was to make a demand for a reduction in rates instead of the increase demanded by the company. The commission was to renew its hearings on September 10th.

Inquiry into Commission Methods Is Proposed

A RESOLUTION, according to the Atlanta *Constitution*, was to be introduced in the house for a five-fold investigation of the public service commission. Its sponsor, Representative W. M. Lester, said that he would

have the speaker appoint a committee of not more than five members of the house. They would be authorized to probe into the following phases of the public service commission's activity:

"1. What basis the commission has for the present rate charged the public utilities of the state.

"2. What control the commission has over the holding companies for the utilities of Georgia and allied engineering and managing companies of the state.

"3. The control and management of public utilities by the commission as to service to customers and the extension of service to rural communities.

"4. The valuation of utilities fixed by the commission and the methods followed.

"5. The methods and procedure followed by the commission in the regulation and control of utilities and the duties of the employees of the commission."

Idaho

Taxation of Municipal Plant Current Is Upheld

IN an opinion by Attorney General Fred J. Babcock, it is held that electricity produced by a municipal power plant is subject to the new state tax of one-half mill per kilowatt hour on all energy generated within the state, says the *United States Daily*, which adds:

"The act provides that the tax shall be levied upon 'each and every individual firm, partnership, common-law trust, corporation, association, or other organization, now engaged or hereafter to engage in the generation, manufacture, or production of electricity and electrical energy in the state of Idaho, either through water power or by any other means for barter, sale, or exchange.'

"The only exemption designated in the law is for power generated for irrigation pumping purposes.

"The city of Idaho Falls, through its attorney, Ralph Albaugh, notified the state commissioner of law enforcement, that the municipality would not pay the tax on power generated by its plant. Municipal property is free from taxation under the Constitution, he asserted.

"The attorney general in his opinion stated that the levy is not a tax on property but on power generated and that it is not on holdings but on production."

Indiana

Electric Rate Reduction Is Asked in Franklin

A PETITION signed by eighteen business firms of Franklin has been presented to the Indiana Public Service Commission asking that the commission send engineers and auditors to the city to investigate electric rates. The Indianapolis *News* says:

"The petition was filed by Jap Jones, Martinsville, who recently entered into contract with the council of this city to engage in a legal fight with the commission in an effort to obtain lower rates. The contract provides that Jones is to conduct the legal proceedings, and if successful will receive 25 per cent of the amount saved the first year of the new rate. If he loses the fight Jones agrees to pay the cost of all attorneys, appraisers, and engineers. Jones recently conducted a similar fight in Martinsville, when he succeeded in having the rate lowered from 10 cents to 6 cents."

Minnesota

Commission Will Reopen Telephone Rate Hearings

THE commission has set a hearing for December 1st in the telephone rate case. The commission recently approved a merger of telephone properties and also a new set-up of rates. City officials in Minneapolis and St. Paul objected to the rate order.

Commissioner C. J. Laurisch, according to the St. Paul *News*, in reply to an attack by A. J. Conroy, public utilities commissioner of St. Paul, said that Mr. Conroy as well

as a large part of the public apparently had suffered under the delusion that the recent order of the commission approving the merger of the Tri-State and Northwestern Bell companies was final as to rates. He pointed out that the rate case had been pending since last September, several months before the hearing on the stock transfer case, and in the recent order approving the merger it was specifically stated that the rate investigation was indefinitely postponed.

The commission has incorporated an amendment in its order approving the sale which provides that the changes in rate structure set forth in the order shall not block a final determination of rates on the basis of valuation of telephone property.

The commission has been hampered in its efforts to investigate rates by the failure of the legislature to provide adequate funds. It is charged that city officials have not co-operated with the commission in its efforts to obtain an adequate appropriation.

Commissioner Laurisch is quoted in the St. Paul *News* as stating:

"Eugene M. O'Neill, former city attorney, and Leonard C. Seamer, city valuation and assessment engineer, had placed a valuation of $46,500 on the company's property adjoining the present Tri-State office, whereas the company itself valued the property at $35,664.

"It would be impossible for the commission to go into court seeking a rate reduction on the testimony of Mr. Jurgensen when city officials 'are placing values on property higher than the company itself.'

"Such an attempt to obtain rate reductions would in all probability result in a disgrace to the commission and a decision based upon a case inadequately presented."

Local officials have asked the Interstate Commerce Commission to withhold its approval of the sale of the Tri-State Telephone Company to the Northwestern Bell.

Missouri

City Attempts to Oust Utility Company

THE city of Sikeston has filed quo warranto proceedings in the Missouri Supreme Court to compel the Missouri Utilities Company to discontinue business in that city, where it operates an electric plant.

The city has recently placed in operation a municipally owned light and power plant but it is said that the utility company has refused to discontinue operation regardless of a resolution adopted by the city council directing it to vacate and discontinue business. It is charged that the company has been operating under a 20-year franchise, granted in 1902, which expired in 1922.

Separation of Merchandising Accounting Is Studied

THE public service commission will conduct hearings on the question of a new uniform classification of accounts for public utilities including, as to electric companies, the separation of merchandising accounts from regular utility business. The *United States Daily* says:

"The tentative rules for electric utilities includes a section requiring the keeping of separate accounts for merchandising and jobbing or contract work, and requiring that an 'equitable portion' of general expenses, customers' accounting, general accounting, and administrative expenses, as well as taxes 'to the extent applicable,' shall be charged to these accounts.

" 'It is the intent,' says a note following this section of the proposed rules, 'that the sale of merchandise and appliances and jobbing or contract work shall be accounted for as a separate and distinct department of the utility so that the final net profit or loss from such services, as the case may be, can be determined and stated separately in this account.

" 'To this end, there should be charged to this account, not only the directly chargeable costs but also supervisory, administrative, and other incidental and similar costs. In the event employees devote part of their time to the electric department and a part thereof to merchandising and jobbing, their salaries or wages should be properly separated and apportioned, based upon the amount of time devoted to each kind of service. Likewise, just and equitable proportions of general supervisory and administrative expenses should be included.'

"A bill to prohibit merchandising by public utilities was introduced in the 1931 Missouri legislature. It was passed by the house, but failed to receive favorable action in the senate."

New York

Westchester Company Willing to Reduce Rates

IN answer to a petition filed with the commission against the Westchester Lighting Company by the city of Rochelle as part of a concerted effort by several communities to obtain lower rates, the company has indicated that it would accept a rate revision. This would be in the form of promotional rate schedules for gas and electric service.

Eugene H. Rosenquest, president of the utility, is quoted as saying that the company is desirous of improving its rate structures so as to promote increased use of its electric and gas services. The statement continues:

"In the light of its experience with the present structures of rates for gas and electricity, the respondent company is willing to formulate and submit to the commission, for consideration and approval, revised schedules of rates for gas service and electric service for general uses, providing for reasonably graduated blocks, promotional forms of rates, and rates which it believes would be more advantageous and favorable for the actual users of gas and electricity and would make possible reductions in follow-on rates in the future."

The answer suggesting the possibility of new rate schedules strongly opposes the complaint filed with the commission. One of the points made is that a complaint by the city of New Rochelle, as a user of electricity for street lighting, is defective and insufficient since no public official of New Rochelle has been empowered by the public to file any complaint. Street lighting, it is asserted, is sold to the city under a contract covering substantial services in addition to the furnishing of electric current.

North Carolina

Optional Gas Rate Schedules Are Offered

THE Southern Public Utilities Company has announced a new optional schedule of gas rates, which has been approved by the commission and which will be effective for those customers who exercise their option, says the Charlotte *Observer*. This paper adds:

"The new rates, as announced by Assistant Manager C. B. Miller of the Charlotte office of the S. P. U. Company are as follows: First 300 cubic feet or less used per month, $1.50; next 4,700 cubic feet used per month, 15 cents per hundred cubic feet; next 145,000 cubic feet used per month, 10 cents per hundred cubic feet; all over 150,000 cubic feet used per month, 9 cents per hundred cubic feet.

"Mr. Miller explained that the existing rates will remain in effect for those who prefer to be served under them. The new rates, however, according to Mr. Miller, will effect a material saving to consumers who make full use of gas facilities. Under the new rate, the customer will hereafter pay only a dollar per thousand cubic feet on all consumption over 5,000 cubic feet per month, while the rate for all service above 150,000 cubic feet per month will be billed at 90 cents per thousand cubic feet.

"With the new rates available to all customers, officials of the company are anticipating a much wider use of gas for domestic purposes and a very substantial increase in the use of gas for commercial and industrial purposes."

Utilities Must Submit Contracts With Related Companies

VERIFIED copies of all written contracts or agreements between electric, gas, or telephone utilities and holding, managing, or operating companies must be filed with the commission under an order pursuant to a recent law providing that all public service corporations, when requested by the commission, shall submit copies of contracts of this sort.

The law provides that the commission may disapprove any such contracts after hearing if, in its judgment, it is found to be unjust or unreasonable and designed or entered into for the purpose of concealing, abstracting, or dissipating the net earnings of the public service corporations receiving such services.

The commission has also called for a report of all payments made to such other companies during 1930 or from January 1, 1931, to June 30, 1931, for services or property in connection with North Carolina operations, with statements of the character of service for which such fees were charged and the basis on which they were determined.

Ohio

Voters Approve Renewal of Street Car Franchise

THE renewal of the so-called Milner street railway franchise for a period of ten years, with certain modifications, has been approved by the voters of Toledo. There were 46,740 votes in favor while 14,179 votes were cast against the proposal. The Toledo *Blade* states:

"Under the terms of the revised franchise the Community Traction Company will have the exclusive street car and bus transportation rights within the city for the next ten years and amortization of the company's property will be delayed for the same period of time. . . .

"The original Milner street railway ordinance became effective February 1, 1921. The ordinance was to be in effect for twenty-five years and one of the provisions declared that the company would have to start amortization of its property at the expiration of the first ten years. Under the terms of the revised draft, which was approved by the voters Tuesday, this amortization will be delayed for ten years, until 1941. The entire ordinance will be in effect until February 1, 1956.

"The revised ordinance provides that the Community Traction Company shall establish a 5-cent fare for school children, continue the 1-cent fare for children under eight years of age, and attempt to work out some system of weekly fare rates or zone rates of fare which are expected to be lower than the present token fare rate.

"The company further agrees, under the revised ordinance, to make any additional extensions of time of the franchise which are approved by the voters.

"The city is given the right, under the terms of the revised franchise, to require the Community Traction Company to make any extensions of service on new lines or betterments of service on existing lines with the approval by the city council, the mayor, and the street railway board of control.

"The Community Traction Company is specifically required, under the terms of the revised franchise, to install concrete paving bases underneath its tracks.

"The new ordinance provides that the company shall cancel $406,125 in notes which were issued to pay the deficit in the stabilizing fund.

"Other changes are contained in the draft of the revised franchise relative to the financing and accounting system of the company."

Oklahoma

Further Natural Gas Rate Reduction Is Made

A FURTHER reduction of 10 per cent in natural gas rates in nearly fifty cities and towns served by the Oklahoma Natural Gas Corporation will become effective October 1st, as the result of an agreement between the company and the commission by which the latter will discontinue its investigation into valuations and rates of the utility, according to an announcement made by the commission, reported in the *United States Daily*. The *Daily* says:

"This reduction is the second to be made by the Oklahoma company since Governor Murray directed the filing of ouster suits against the company and others on charges of violations of the anti-trust laws of the state.

"The present initial rate for gas service is 50 cents per thousand cubic feet, to which figure it was reduced from the maximum rates of 57 to 64 cents prevailing prior to July 1st in most of the cities served by the company.

"Shortly after the filing of the ouster suits, the company offered to make a reduction in rates in consideration of dismissal of the suits. This offer was accepted, with the additional agreement that the corporation commission should proceed with its valuation case and fix permanent rates. The valuation case has been in progress before the commission since that time.

"E. A. Olsen, executive vice president of the Oklahoma company, now has offered on behalf of the utility, according to the commission's announcement, to make an additional reduction of 10 per cent, effective October 1st, if the valuation proceedings are discontinued, and this offer has been accepted.

"The new rates, the commission explained, will be 45 cents per thousand cubic feet for the first 100,000 cubic feet used each month, and 18 cents per thousand cubic feet for all excess. The gate rate will remain at 25 cents. Additional information was made available as follows:

"These rates will apply to all the municipalities served directly except five, which already, due to local conditions, have rates approximating those now to be established.

"The discontinuance of the detailed appraisal of the company's properties and audit of its books will save many thousands of dollars for the state and the company, as each was making an independent survey.

"Settlement of the Oklahoma company case will permit the commission to begin an immediate study of the property values and rates of the Lone Star Gas Company of Texas and its subsidiaries. The Lone Star Company charges an average rate of 75 cents per thousand cubic feet in twenty-six southwestern Oklahoma cities and towns."

A movement has been started in Tulsa, according to the Tulsa *World*, to have Governor Murray request an investigation of the action of the commission in canceling its investigation in consideration of the reduction. A resolution to that effect was adopted by an independent movement for lower rates at a meeting held on August 18th. A resolution was also adopted in which Mayor Watkins and the city commissioners were requested to hold no more conferences with gas company officials on the subject of a new franchise. The sponsors of this movement hold that any proposal from the Oklahoma Natural Gas Corporation should be made direct to the people without any initial effort to secure an official approval.

City Insists Upon Franchise Rate Instead of Commission Rate

THE city of Sand Springs has filed with the commission a petition asking that orders relative to gas rates in that city be rescinded and that the franchise rate of 20 cents per thousand cubic feet be restored. The city alleges that the commission is without constitutional authority or jurisdiction to fix utility rates where a franchise exists.

The supreme court has ruled on cases of a somewhat like nature but it is contended that this is the first time a direct attack on the jurisdiction of the commission has been made. It is also demanded in the petition that the Oklahoma Power & Water Company be compelled to make an accounting for all money received since the 20-cent rate was increased and to return overcharges to the gas consumers.

Oregon

Rate Reduction Declared to Be of No Benefit

REDUCED light and power rates, announced by the Portland Electric Power Company and the Northwestern Electric Company, have not resulted in satisfactory residential and commercial rate reductions, according to City Attorney Grant of Portland, who has mailed his objections to Commissioner Thomas. He asks that the investigation by the commission into electric rates in Portland be reopened. The Portland *Journal* informs us:

"Grant says the city's expert investigators now have had time to make detailed study and comparison of electric light and power prices before and after the cut ordered in July, 1930, and that they have been unable to find wherein actual reductions warranted by the evidence in the case at the original hearing, and promised by the power companies, have been made."

South Carolina

Investigating Committee Sends Questionnaire to Utility

THE South Carolina Power Rate Investigating Committee, created by the 1931 legislature, has sent a general questionnaire to all electric companies and has made a separate inquiry as to their practices in connection with the merchandising of appliances, says the *United States Daily*, which continues:

"The general questionnaire calls for information upon the following matters: Cost and production data on hydroelectric plants, internal combustion plants and steam plants, distribution system cost, franchises, general information, general data on plants, list of cities in which company operates, properties leased by the company, load data, rate schedules and revenue, special contracts and rates, summary of energy bought and sold, transmission line data, and transmission system cost.

"The committee, through its chairman, Thomas B. Pearce, announced that the inquiry will include the matter of merchandising and that a letter has been sent to all electric

companies engaging in selling appliances, making the following inquiries:

"1. Is your electrical merchandising business conducted on the same basis that an independent business of like nature would be conducted—*i. e.*, do you segregate your merchandising business operations from the primary function of your business, namely, that of selling electricity?

"2. What were your total receipts from merchandise for each of the years commencing with the year 1925 and including the year 1930? Please classify your answer to this question into:

"a. Small appliances not requiring special wiring installations; b, electrical refrigerators; c, washing machines; d, electric ranges; e, hot water heaters; and f, others.

"3. What expense did your company have in connection with the above-itemized merchandise in the stated years? Please subdivide as follows:

"a, Cost of merchandise; b, store or other rentals; c, cost of selling; d, installing; e, servicing; f, advertising and other promotion; g, losses from repossessions and otherwise; and h, other costs not listed above.

"4. To what account numbers were each of the above items charged, and what were the total charges to each account number for each of the stated years?

"5. Do you believe that the present system of merchandising electrical appliances and equipment is productive of the best results from the standpoint of increasing the electrical load to your system?"

Tennessee

Rate Reduction Hinges on Natural Gas Plan

THE Nashville Gas and Heating Company has asked the commission for approval of contracts, franchises, agreements, and charters of the Missouri-Kansas Pipe Line Company, the Kentucky Natural Gas Company, and the Nashville Company for bringing natural gas into Nashville immediately from the western Kentucky fields. In connection with this proposal the company offers a reduction of gas rates for both domestic and commercial consumers.

The utility plans that the consumers will receive the benefits of lower rates immediately following the completion of the installation of the equipment and pipe lines for transportation between the Kentucky fields and Nashville. It is understood that the new scale of rates will slightly increase the cost for the occasional users, but will substantially decrease the cost for the regular consumers and for commercial and industrial consumers of gas.

Abnormal rates have been charged in Nashville, according to the company, for many years because of an assessment by the city of 5 per cent of gross income levied upon the business of the company in addition to other heavy taxes and because of the large cost of manufactured artificial gas from coal and coke and fine grades of oil.

Texas

San Antonio Telephone Rate Case To Be Reopened

THE San Antonio telephone rate case which has been in the Federal court for over four years will, according to the Houston *Chronicle*, be reopened about September 20th before Joseph Dibrell, master in chancery. The *Chronicle* says:

"It appeared late last year that the case had ended with a victory for the Southwestern Bell Telephone Company, whose increase of local rates as much as 33⅓ per cent caused the court contest. Soon after the telephone company raised its rates it obtained from Federal Judge Duval West a temporary injunction restraining the city of San Antonio from enforcing an ordinance which would prohibit the rate increase without the city's permission. Judge West then referred the case to Dibrell to take testimony, which was had at length. Valuation and earnings, of course, were the outstanding points at issue, the city contesting the company's different bases.

"However, the master finally submitted a report finding in favor of the telephone company. Meanwhile, Judge Lee Estes of Texarkana, to whom the telephone case had been referred for hearings, had died and the case went before Judge Edwin Holmes of Yazoo City, Miss. Judge Holmes was about to order final judgment in favor of the phone company when the Supreme Court of the United States gave a decision in a telephone rate case

appealed from Illinois which Judge Holmes decided, upon application of the city, warranted reopening of the local case for further testimony. In the Illinois case the high court decided in effect that long-distance toll earnings were to be considered separately.

"This ruling revived the city's hope of successfully combating the rate increase which has prevailed for nearly five years."

Referendum on Telephone Rates Is Turned Down

REFERENDUM petitions signed by more than 10,000 persons and calling for reductions in telephone rates in Houston have been rejected by the Houston city council. This action was on advice by the city legal department that ordinances prescribing rates to be charged by public utilities are reserved from and not subject to referendum, and that the city council cannot legally submit such rate ordinances to popular vote. The petitions asked for reduction of business rates from $9 to $6 and residential rates from $4 to $2.

The Southwestern Bell Telephone Company about ten years ago secured a Federal court injunction restraining the city from lowering rates. That injunction, it is said, is still in effect, and the sponsors of the petition have stated that they would request the city legal department to work on getting the injunction dissolved.

A. L. Edmondson, division commercial superintendent, is quoted in the Houston *Chronicle* as saying that the company could not reduce rates because it is not making and has not made for some time anything like a fair return on the investment. He declared that the rates are more than fair to the subscribers.

Virginia

Gas Rate Reduction Is Tabled by City Committee

THE utilities committee of the Richmond council on August 28th tabled a proposed gas rate ordinance which would reduce the rates for users of from 10,001 to 100,000 cubic feet from 80 cents to 65 cents per thousand feet. One of the councilmen announced that he would introduce an ordinance providing for a reduction in the rate to consumers of from 2,000 to 10,000 feet from $1.26 to $1 per thousand and a reduction to users of from 10,001 to 990,000 feet from 80 cents to 65 cents per thousand.

West Virginia

Attack on Natural Gas Rates Is Started

A COMPLAINT was filed last month by the city of Wheeling to obtain lower rates from the Natural Gas Company of West Virginia. The commission then ordered the company to file its answer. An appropriation of $50,000 was made in the 1931–32 city budget for expenditures to be incurred in the campaign for lower rates.

The present rate in old Wheeling is 52 cents per thousand cubic feet of gas with a 2-cent discount for prompt payment. This compares with a rate of 45 cents with a discount of 5 cents that is being charged in Warwood by the Manufacturers Light & Heat Company. A reduction in the rates of the latter company was also to be sought.

The city is prepared to invoke an agreement which was entered into in June of 1924 permitting the company to increase its rates for a stipulated period. According to the Wheeling *News:* "This agreement was the solution of the utility's petition to the public service commission for an increase in its rates during the alleged gas shortage of the winter of 1923–24. In return for the agreement to a natural gas rate increase for domestic consumers the company agreed to dismissal of its pending petition without prejudice.

"The agreed rate was stipulated to expire with the meter reading of December 15, 1927, and the city, in its fight before the public service commission, is prepared to charge that the natural gas utility has charged an illegal and exorbitant rate for past three or four years.

"In return for the increase which sent the price of gas from 40 cents to 52 cents per thousand cubic feet the petitioner utility promised to expend the added revenue in improvement of its service and increasing its supply of natural gas for domestic consumption in Greater Wheeling."

The Latest Utility Rulings

Small Return Allowed to Utility Irregularly Managed

ONE of the reasons why it is impossible for regulatory authorities to establish a hard and fixed percentage of return as lawfully reasonable was clearly demonstrated in a recent opinion of the Connecticut commission in reducing the rates of an electrical utility in that state upon petition of the utility's patrons. The company conceded that its rates were too high, but contended that they should be reduced so as to produce an annual return of not less than 8 per cent upon a rate base of $300,000. After throwing out several claimed allowances, the commission fixed the fair value of the company's property for rate-making purposes at $235,000, and then proceeded to reduce the rates calculated to yield only approximately 5 per cent return on the rate base so fixed. Commenting upon this allowance, the commission's opinion stated:

> "Upon consideration of the financial history of this company and the foregoing principles, the commission believes that the fair return to this company should not exceed 5 per cent on the aforesaid value of $235,000, and that in fixing an allowance for depreciation, the same should be reduced to an amount less than might otherwise be proper in view of the present excessive reserve maintained by the company. In allowing a 5 per cent return it is not to be understood that the commission regards such a return in rate cases generally as adequate, and it is only the peculiar circumstances applicable to this case and outlined above that warrant, in the commission's opinion, the allowance of a rate of return as low as 5 per cent."

Evidence reviewed by the commission seemed to indicate that the company had, since 1922, paid never less than 10 per cent dividend on common stock, and as much as 30 per cent dividend in 1930. This evidence also seemed to show that property retired as no longer used or useful in the public service had not been deducted from the fixed capital investment, and that, in view of the company's high state of maintenance, replacements of property had generally been improperly charged to operating expenses rather than deducted from the fixed capital investment and charged against retirement reserve. *Re Clinton Electric Light & Power Co. (Conn.) Dockets Nos. 5601, 5612.*

Corporations Have Greater Liberty than Individuals under New York Law

BY a peculiar evolution of regulatory jurisprudence § 27 of the New York Transportation Corporations Law authorizes a telephone corporation (and a telephone corporation has been held not to include an individual) to construct and maintain lines over public highways or underground in any municipal corporation in the state. But before such lines can be laid underground, permission must be secured from the proper authorities of the municipal corporation. It is not necessary, therefore, for a corporation to secure a local franchise before applying to the New York Public Service Commission for authority to engage in telephone operation unless it intends to lay its wires underground.

When Mrs. Cassie E. Tooke asked

for authority to transfer her small rural system in Madison county to Donald F. Davison, Commissioner Neal Brewster raised the point that the petition could not be granted because there was no evidence that Mrs. Tooke had local franchises and Mr. Davison as an individual could not enjoy the exemption of the Transportation Corporations Law. Accordingly, a new corporation was formed July 10, 1931, called the Midstate Telephone Company, Inc., to which Mr. Davison assigned his option to purchase Mrs. Tooke's property and the petition was approved. *Re Tooke (N. Y.) Case No. 6800.*

A Federal Court Restrains the Montana Commission from Fixing Minimum Rates

A most far-reaching decision of regulatory importance was handed down by a statutory Federal district court on August 22nd in Montana. The court's opinion, written by Judge George M. Borquin, sets aside an order by the Montana Public Service Commission (which was subsequently sustained by the Montana Supreme Court) fixing the minimum rate which the Great Northern Utilities Company might charge for gas service in the city of Shelby.

The commission's order had been predicated upon the right of the state, in the exercise of its police power to fix rates of public utilities, to determine minimum as well as maximum rates in order to prevent the economic waste and sometimes disastrous consequences that attend rate wars and cut-throat competition between different utilities operating in the same community.

The Federal court's opinion concedes the validity of the Montana statute delegating regulatory powers to the commission of that state, but held that the commission's order was invalid because it tended to restrain free trade and competition, and to violate the constitutional contract rights of the utilities involved. Judge Borquin's opinion stated in part:

> "Whether regulation is reasonable always depends upon circumstances. There may be, and it is assumed there are, good and valid reasons to justify fixing minimum rates, and when the field affords room for their application with resultant fair returns to all occupying it, such rates and the order are reasonable and valid. But when the field is limited, and reasonable rates will afford fair returns to but one, and two occupy it, the law of self-preservation and survival of the fittest invokes the right of competition to the last extremity; and any minimum rate and order which would prevent the struggle and condemn the rivals to the ordeal of slow starvation is unreasonable and void. In such circumstances the state must prevent competition for patronage and not merely competition in rates."

Circuit Judge William H. Sawtelle, of San Francisco, dissented from Judge Borquin's opinion. *Great Northern Utilities Co. v. Montana Public Service Commission (U. S. Dist. Ct.).*

The West Virginia Water Power Act Is Held Unconstitutional

THE West Virginia Water Power Act of 1929 authorizes the public service commission of that state to grant a water power license after determining upon hearing that the advantages to the public of any expected project will exceed the disadvantages. So far, so good; but the act goes on to provide that the governor of the state shall be a member of the commis-

sion in such proceedings, and that there shall be a right of appeal from the commission's order to the circuit court with a trial *de novo* and an appeal therefrom to the state supreme court of appeals.

Last winter in the *West Virginia Law Quarterly*, Professor James W. Simonton, of the University of West Virginia, vigorously attacked these provisions as unconstitutionally conferring legislative powers upon both the executive and judicial departments of the government. Subsequently, a proceeding was instituted by interested citizens to set aside an order of the West Virginia commission granting power licenses for dams on the Cheat river.

The supreme court of appeals has not only sustained the constitutional objections to the provisions regarding the membership of the governor and the appeal to the court, but has decided that, by virtue of them, the entire act is null and void. It might be well to note that the court's objection to appellate review was not directed against appellate proceedings *per se*, but against appellate trial of issues *de novo* whereby the appellate court might determine anew legislative facts without regard to the findings of the public service commission. *Hodges et al. v. Public Service Commission, et al. (W. Va. Sup. Ct. App.) No. 7014.*

A New York Electric Company Need Not Pay for Changing of Service Switches

PRIOR to July 1, 1930, the Brooklyn Edison Company had a regulation in effect known as the "multiple tenant rule" which provided that where the installation of meters (in premises containing more than one tenant) for additional tenant customers necessitated the installation or changing of a service switch controlling the connection or disconnection of all meters, the switch should be installed (and incidentally paid for) by the company. After that date, however, the regulation was revised so as to make the consumer responsible for making any changes in his wiring, service, or meter equipment made necessary by an increase or decrease in his installation.

Recently the commission was moved by repeated complaints to make an investigation into the reasonableness of the revised regulation. The complainants objected that where a service switch which has been sufficient to function for a certain number of tenants is found, upon the installation of service for a new tenant, to be inadequate to carry the increased load, it is necessary for the newcomer to install a new service switch of a capacity to provide for all of the service on the premises. The company, however, objected that the service switch was of no use at all to the company itself, but was solely for the safety and convenience of the consumer and required by the electrical code of the city of New York.

The New York commission, in an opinion by Commissioner Van Namee, agreed with the company and dismissed the complaints, pointing out that the service switch was part of the customer's wiring system for which the company ought not to be made responsible. The opinion suggested that any inequality thrust upon a new customer required to install a switch of capacity to serve all the rest of the tenants was not a matter of concern to the utility, but rather a matter for adjustment between the new tenant and his landlord. *Re Brooklyn Edison Co. Inc., et al. (N. Y.) Case Nos. 6733, 6736.*

A Street Railway Company's Fares Are Cut Following a Cut in Its Tax Liability

LAST June the New York Transit Commission permitted the receiver of the New York & Queens County Railway Company to increase fares from 5 to 6 cents for a 6-month period from July 1 to December 31, 1931, in order to meet an emergency in the form of a liability for deferred taxes including interest. The total liability claimed and sworn to by the receiver upon which the commission relied was $359,905.10.

Subsequent to the increase, however, the receiver through litigation succeeded in having the deferred taxes and interest reduced by $200,203.15. In view of this reduction of the company's liability, Chairman Fullen of the transit commission ordered that the increased rate order of June 24th be rescinded and that the 5-cent fare be restored, effective August 16, 1931. *Re New York & Queens County Railway Co. (N. Y.) Case No. 2727.*

Other Important Rulings

THE Maine commission has dismissed without prejudice to subsequent renewal a petition of certain municipal officers of the city of Portland for an order directing the alteration of a highway bridge over the tracks of the Portland Terminal Company, and apportioning the cost incidental thereto, where there was not sufficient evidence submitted to show the reasonable cost of such authorization, the financial conditions of the parties involved, or the need of the alterations from the viewpoint of public convenience and necessity. *Re Portland Terminal Co. (Me.) R. R. No. 1717.*

The Wisconsin commission, in denying the application of the Yellow Cab Company and granting the application of John F. Schenk for certificates to operate bus lines between Wisconsin Rapids and Nekoosa has, where one of two rival applicants for certificates to operate as motor carriers failed to secure the approval of the authorities of municipalities involved in the proposed operations, under the law (Chap. 194.11) no choice but to deny the petition of such applicant and to grant the certificate of the applicant successful in securing such local approval. *Re Yellow Cab Co. et al. (Wis.) 2AT-1, 2AT-12.*

The Ohio commission has substantially modified the application of a motor freight carrier for authority to put into service additional equipment of ten 2½-ton trucks and fifteen 5-ton trailers which represented an increase over the carrier's existing equipment of 300 per cent. The commission said that it was not ready to subscribe to the principle that motor trucks should be permitted to make unlimited inroads upon rail lines. However, in view of the fact that there was evidence of necessity for some increase in motor freight equipment as the result of the recent abandonment of interurban rail service between Cleveland and Mansfield, the commission authorized the company to put into service two tractors and two trailers to be used only in the territory formerly served by the abandoned interurban rail line. *Re Cleveland, Canton & Columbus Motor Freight Co. (Ohio).*

The Pennsylvania commission has ordered the Towanda Water Works to build an additional reservoir of not less than 11,500,000 gallons capacity in which a reserve supply of fresh water could be available, where evidence showed that the company was operating close to its present capacity and had only a reservoir of stagnant water for